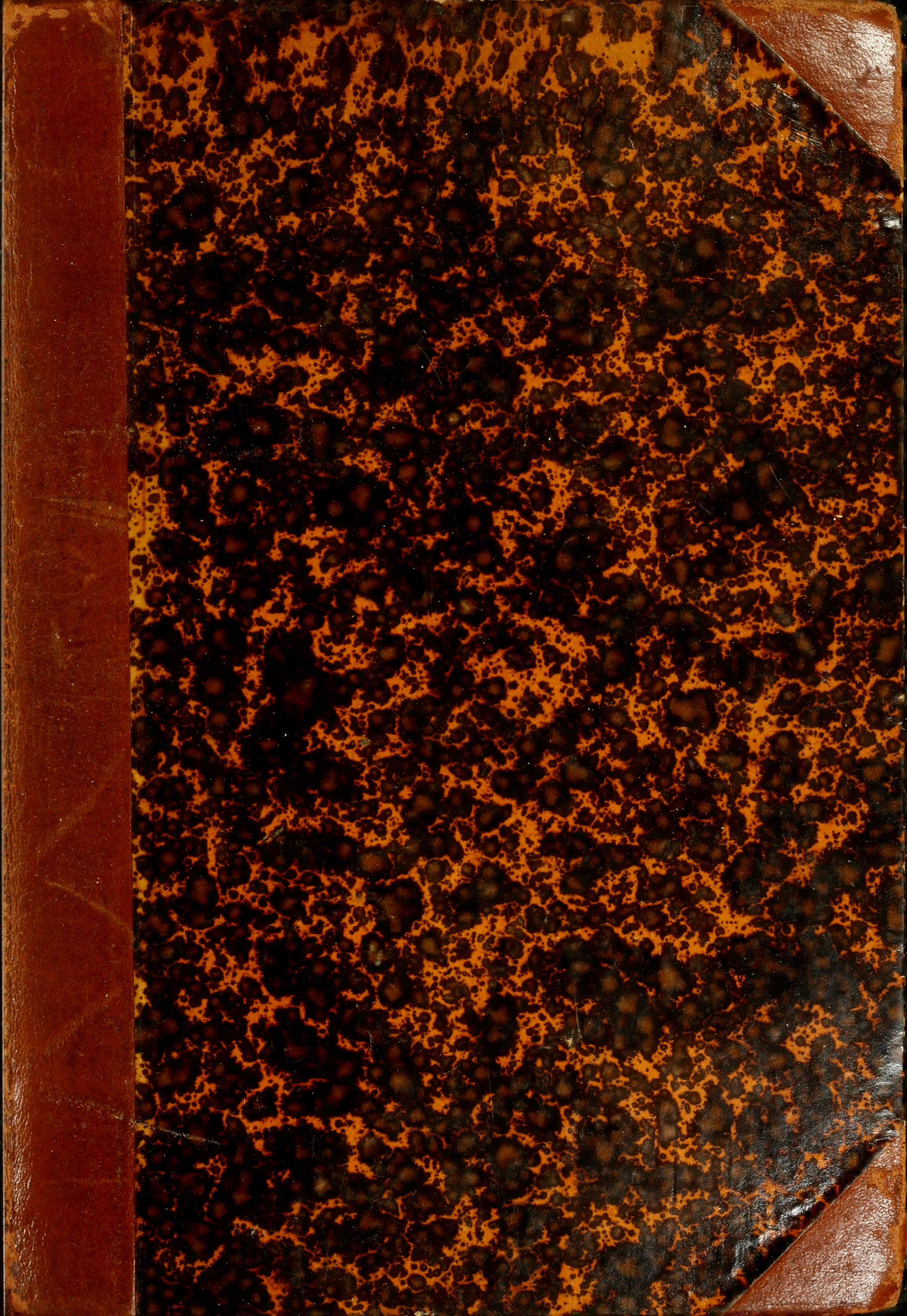


Jahrbuch
des
Völkerrechts

Gegründet in Verbindung mit

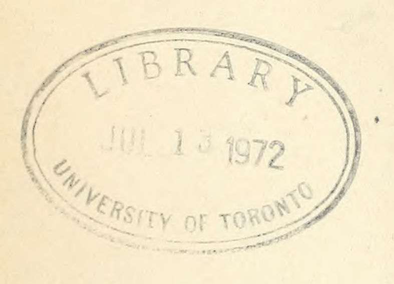
Staatsminister Asser (Haag), Prof. v. Bar (Göttingen), Dr. Barrios (London), Gesandter Itiberê da Cuñha (Berlin), Prof. Fiore (Neapel), Prof. Fleischmann (Königsberg), Gesandter Hagerup (Kopenhagen), Prof. Huber (Zürich), Prof. Kohler (Berlin), Prof. v. Korff (Helsingfors), Prof. Lammasch (Wien), Prof. v. Liszt (Berlin), Prof. v. Martitz (Berlin), Prof. Meurer (Würzburg), Prof. Nys (Brüssel), Prof. Okamatsu (Kyōto), Prof. Marquès de Olivart (Madrid), Prof. Oppenheim (Cambridge), Prof. Renault (Paris), Prof. Sá Vianna (Rio de Janeiro), Prof. Schücking (Marburg), Prof. v. Streit (Athen), Prof. Wilson (Harvard University), Prof. Zorn (Bonn)

von

Th. Niemeyer und **K. Strupp**

VI. Band (Sonderband):

Völkerrechtliche Urkunden zur Entwickelung des Weltkrieges





Verlag von Duncker & Humblot. München und Leipzig 1920

Die völkerrechtlichen Urkunden des Weltkrieges

Herausgegeben von

Geh. Justizrat Professor Dr. **Theodor Niemeyer**
und Dr. **K. Strupp**

IV. Band:

Vereinigte Staaten von Amerika. Unterseebootkrieg. Friedensaktionen.

Herausgegeben von
Th. Niemeyer

Jahrbuch des Völkerrechts VI. Band



Verlag von Duncker & Humblot. München und Leipzig 1920

Vorwort.

Die anfängliche Neutralitätsstellung Amerikas, sodann sein Eintritt in den Krieg, und endlich seine Beteiligung an der Einleitung der Friedensverhandlungen werden durch Vorgänge begleitet und gekennzeichnet, welche nicht nur, wie die in den vorhergehenden Bänden dieses Jahrbuchs dokumentierten politischen Geschehnisse nähere oder entferntere Beziehungen zum Völkerrecht enthalten, welche vielmehr in ihrem Kern völkerrechtlicher Natur sind.

Zunächst standen die Behandlung der Londoner Seerechtsdeklaration, die Seesperre und die amerikanischen Militärlieferungen, dann einzelne Fälle und Fragen des Seekriegsrechtes, das Repressalienrecht, weiterhin der ganze Komplex der unter dem Namen Unterseebootkrieg behandelten Probleme des Seekriegsrechts im Vordergrund. Endlich war die Beteiligung Amerikas an den Friedensaktionen im ganz besonderen Sinn völkerrechtlich orientiert.

Dieser Sachverhalt hat der Herausgabe der Urkunden des vorliegenden, „amerikanischen“, Bandes des Jahrbuches eine Gestalt gegeben, welche nicht zuläßt, die abgedruckten Urkunden auf dem Titelblatt als „politische Urkunden des Weltkrieges“ zu bezeichnen. Es handelt sich fast durchweg um unmittelbar völkerrechtliche Urkunden.

Ferner hat die allgemeine völkerrechtliche Bedeutung der in den amerikanischen Erklärungen und Verhandlungen erörterten Fragen die innere und äußere Notwendigkeit ergeben, die Urkundensammlung dieses Bandes nicht streng auf Amerika zu

beschränken, sondern eine Reihe englischer, französischer, neutraler Materialien aufzunehmen, wie die englischen und deutschen Seesperrungserklärungen und andere Seerechtsverordnungen, einschließlich des Wirtschaftskrieges im neuen Sinne des Wortes.

Endlich hat das besondere Verhältnis Amerikas zu den Friedensaktionen 1916—1918 und zu dem Völkerbundgedanken dazu geführt, auch in dieser Richtung über das amerikanische Material hinauszugehen. Es sind insbesondere auch die Urkunden der päpstlichen Friedensaktion aufgenommen, sowie der Text des *Grey*'schen Völkerbundprogramms, welcher weniger gekannt oder schneller in Vergessenheit geraten zu sein scheint, als er verdient.

Die Vorarbeiten zu diesem Bande waren schwieriger, als erwartet werden konnte. Die Sammlung und Sichtung der Urkunden, die Fürsorge für die Drucklegung und die Herstellung der Register haben wiederum im Rahmen des Instituts für internationales Recht stattgefunden. Die letzte Hand hat in dankenswerter Weise Herr Dr. jur. *H. J. Held*, Assistent des Instituts für internationales Recht, daran angelegt.

Kiel, 1. Oktober 1920.

Th. Niemeyer.

Inhaltsverzeichnis.

Registerteil.

E. Vereinigte Staaten von Amerika.
Unterseebootkrieg.

Nr. 1893. Neutralitätsproklamation der Vereinigten Staaten von Amerika vom 4. August 1914*). (Supplement to the American Journal of International Law. Vol. 9, 1915, Official Documents. New York. S. 110 ff.)

August 4, 1914.

Whereas a state of war unhappily exists between Austria-Hungary and Servia and between Germany and Russia and between Germany and France;

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*) Gleiche Proklamationen wurden unter den nachstehend verzeichneten Daten anläßlich der weiteren Kriegserklärungen herausgegeben:

Deutschland—England, 5. August 1914,
Oesterreich-Ungarn—Rußland, 7. August 1914,
England—Oesterreich-Ungarn, 13. August 1914,
Frankreich—Oesterreich-Ungarn, 14. August 1914,
Belgien—Deutschland, 18. August 1914,
Japan—Deutschland, 24. August 1914,
Japan—Oesterreich-Ungarn, 27. August 1914,
Belgien—Oesterreich-Ungarn, 1. September 1914,
England—Türkei, 6. November 1914,
Italien—Oesterreich-Ungarn, 24. Mai 1915,
Italien—Türkei, 23. August 1915,
Bulgarien—Frankreich, England, Italien, Serbien, 11. November 1915.

Der Wortlaut der Proklamationen aus dem Jahre 1915 weicht insofern von dem der Proklamationen aus dem Jahre 1914 ab, als sich 1915 an der in der hier abgedruckten Proklamation mit * bezeichneten Stelle folgende 54 Wörter eingeschaltet finden: within the jurisdiction of the United States as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipement; and no ship of war or privateer of either belligerent shall be permitted to sail out of or leave any port, harbor, roadstead, or waters.

Das American Journal bemerkt a. a. O.: Amerikanische Neutralitätsproklamationen wurden nicht veröffentlicht bei folgenden Kriegserklärungen:

Montenegro—Oesterreich-Ungarn, 7. August 1914,
Montenegro—Deutschland, 9. August 1914,
Serbien—Deutschland, 9. August 1914,
Rußland—Türkei, 3. November 1914,
Frankreich—Türkei, 5. November 1914. Herausgeber.

And Whereas the United States is on terms of friendship and amity with the contending Powers, and with the persons inhabiting their several dominions;

And Whereas there are citizens of the United States residing within the territories or dominions of each of the said belligerents and carrying on commerce, trade, or other business or pursuits therein;

And Whereas there are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

And Whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And Whereas it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

Now, Therefore, I, *Woodrow Wilson,* President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D. 1909, commonly known as the „Penal Code of the United States" the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to-wit:

1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.

11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of a belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of a belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of August instant, and during the continuance of the present hostilities between Austria-Hungary and Servia, and Germany and Russia and Germany and France, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters * subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have preciously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of a belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead, or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer, or merchant ship of an opposing

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Siehe Anmerkung * auf S. 1 Abs. 3. — Herausgeber.

belligerent which may have previously quit the same port, harbor, roadstead, or waters. No ship of war or privateer of a belligerent shall be detained in any port, harbor, roadstead, or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead, or waters of more than one vessel of an opposing belligerent But if there be several vessels of opposing belligerents in the same port, harbor, roadstead, or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said wars, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do hereby enjoin all citizens of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United States, and all persons residing or being within its territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent cannot lawfully be originated or organized within its jurisdiction; and that, while all persons may lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as „contraband of war“, yet they cannot carry such articles upon the high seas for the use or service of a belligerent, nor can they transport soldiers and officers of a belligerent, or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf.

And I do hereby, give notice that all citizens of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, an that they can in no wise obtain any protection from the Government of the United States against the consequences of their misconduct.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of August in the year of our Lord one thousand nine hundred and fourteen and of the United States of America the one hundred and thirty-ninth.

(seal.) *Woodrow Wilson.*

By the President: *William Jennings Bryan*, Secretary of State.

Nr. 1894. Anweisung des Staatsdepartement in Washington vom 6. August 1914 an den amerikanischen Botschafter in London hinsichtlich der Londoner Seekriegsrechtserklärung*). (**E. W. 1.****), S. 5.)

The Secretary of State to Ambassador *W. H. Page.*

(Telegram.—Paraphrase.)

Department of State, Washington, August 6, 1914, 1 p. m.

Mr. *Bryan* instructs Mr. *Page* to inquire whether the British Government is willing to agree that the laws of naval warfare as laid down by the Declaration of London of 1909 shall be applicable to naval warefare during the present conflict in Europe provided that the Governments whit whom Great Britain is or may be at war also agree to such application. Mr. *Bryan* further instructs Mr. *Page* to state that the Government of the United States believes that an acceptance of these laws by the belligerents would prevent grave misunderstandings which may arise as to the relations between neutral powers and the belligerents. Mr. *Bryan* adds that it is earnestly hoped that this inquiry may receive favorable consideration.

Nr. 1895. Neutralitätsaufruf des Präsidenten der Vereinigten Staaten von Amerika vom 19. August 1914. (**E. W. 2*****), S. 17—18.)

An appeal by the President of the United States to the citizens of the Republic, requesting their assistance in maintaining a state of neutrality during the present European war.

(Presented in the Senate by Mr. *Chilton*, Aug. 19, 1914, and ordered to be printed.)

My fellow countrymen:

I suppose that every thoughtful man in America has asked himself, during these last troubled weeks, what influence the European war may exert

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*) Anm.: Die gleiche Anweisung erging an die amerikanischen Botschaften in St. Petersburg, Paris und Wien sowie an die amerikanische Gesandtschaft in Brüssel. Herausgeber.

) **Amerikanisches Weißbuch:
Department of State. Diplomatic correspondence with belligerent governments relating to neutral rigths and commerce. Washington, Government Printing Office, 1915. Printed and distributed May 27, 1915.
(Angeführt als **E. W. 1.**) Herausgeber.

***) **Amerikanisches Weißbuch:**
European War No. 2. (Printed and distributed October 21, 1915.) Department of State. Diplomatic correspondence with belligerent governments relating to neutral rigths and duties. Washington, Government Printing Office, 1915.
(Angeführt als **E. W. 2.**) Herausgeber.

upon the United States, and I take the liberty of addressing a few words to you in order to point out that it is entirely within our own choice what its effects upon us will be and to urge very earnestly upon you the sort of speech and conduct which will best safeguard the Nation against distress and disaster.

The effect of the war upon the United States will depend upon what American citizens say and do. Every man who really loves America will act and speak in the true spirit of neutrality, which is the spirit of impartiality and fairness and friendliness to all concerned. The spirit of the Nation in this critical matter will be determined largely by what individuals and society and those gathered in public meetings do and say, upon what newspapers and magazines contain, upon what ministers utter in their pulpits, and men proclaim as their opinions on the street.

The people of the United States are drawn from many nations, and chiefly from the nations now at war. It is natural and inevitable that there should be the utmost variety of sympathy and desire among them with regard to the issues and circumstances of the conflict. Some will wish one nation, others another, to succeed in the momentous struggle. It will be easy to excite passion and difficult to allay it. Those responsible for exciting it will assume a heavy responsibility, responsibility for no less a thing than that the people of the United States, whose love of their country and whose loyalty to its Government should unite them as Americans all, bound in honor and affection to think first of her and her interests, may be divided in camps of hostile opinion, hot against each other, involved in the war itself in impulse and opinion if not in action.

Such divisions among us would be fatal to our peace of mind and might seriously stand in the way of the proper performance of our duty as the one great nation at peace, the one people holding itself ready to play a part of impartial mediation and speak the counsels of peace and accommodation, not as a partisan, but as a friend.

I venture, therefore, my fellow countrymen, to speak a solemn word of warning to you against that deepest, most subtile, most essential breach of neutrality which may spring out of partisanship, out of passionately taking sides. The United States must be neutral in fact as well as in name during these days that are to try men's souls. We must be impartial in thought as well as in action, must put a curb upon our sentiments as well as upon every transaction that might be construed as a preference of one party to the struggle before another.

My thought is of America. I am speaking, I feel sure, the earnest wish and purpose of every thoughtful American that this great country of ours, which is, of course, the first in our thoughts and in our hearts, should show herself in this time of peculiar trial a Nation fit beyond others to exhibit the fine poise of undisturbed judgment, the dignity of self-control, the efficiency of dispassionate action; a Nation that neither sits in judgment upon others nor is disturbed in her own counsels and which keeps herself fit and free to do what is honest and disinterested and truly serviceable for the peace of the world.

Shall we not resolve to put upon ourselves the restraints which will bring to our people the happiness and the great and lasting influence for peace we covet for them?

Nr. 1896. Englische Order in Council vom 20. August 1914 über die Inkraftsetzung der Londoner Seekriegsrechtserklärung vom 26. Februar 1909 mit Zusätzen und Aenderungen. („The London Gazette“ vom 22. August 1914.)

At the Court at Buckingham Palace, the 20th day of August 1914.

Present.

The King's Most Excellent Majesty in Council.

Whereas during the present hostilities the Naval Forces of His Majesty will co-operate with the French and Russian Naval Forces, and

Whereas it is desirable that the naval operations of the allied forces so far as they affect neutral ships and commerce should be conducted on similar principles, and

Whereas the Governments of France and Russia have informed His Majesty's Government that during the present hostilities it is their intention to act in accordance with the provisions of the Convention known as the Declaration of London, signed on the 26th day of February, 1909, so far as may be practicable:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, that during the present hostilities the Convention known as the Declaration of London shall, subject to the following additions and modifications, be adopted and put in force by His Majesty's Government as if the same had been ratified by His Majesty:—

The additions and modifications are as follows:—

(1) The lists of absolute and conditional contraband contained in the Proclamation dated August 4th, 1914, shall be substituted for the lists contained in Articles 22 and 24 of the said Declaration.

(2) A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage.

(3) The destination referred to in Article 33 may be inferred from any sufficient evidence, and (in addition to the presumption laid down in Article 34) shall be presumed to exist if the goods are consigned to or for an agent of the Enemy State or to or for a merchant or other person under the control of the authorities of the Enemy State.

(4) The existence of a blockade shall be presumed to be known —

(a) to all ships which sailed from or touched at an enemy port a sufficient time after the notification of the blockade to the local authorities to have enabled the enemy Government to make known the existence of the blockade,

(b) to all ships which sailed from or touched at a British or allied port after the publication of the declaration of blockade.

(5) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture to whatever port the vessel is bound and at whatever port the cargo is to be discharged.

(6) The General Report of the Drafting Committee on the said Declaration presented to the Naval Conference, and adopted by the Conference at the eleventh plenary meeting on February 25th, 1909, shall be considered by all Prize Courts as an authoritative statement of the meaning and intention of the said Declaration, and such Courts shall construe and interpret the provisions of the said Declaration by the light of the commentary given therein.

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

Almeric Fitz Roy.

Nr. 1897. Erklärung der deutschen Regierung, betreffend die Anwendung der Londoner Seekriegsrechtserklärung.

(**E. W. 1,** S. 5.)

Ambassador *Gerard* to the Secretary of State.

(Telegram.—Paraphrase.)

American Embassy, Berlin, August 22, 1914, 12 midnight.

Mr. *Gerard* refers to Department's August 19, 4 p.m., and says his August 20, 1 a.m., by way of Copenhagen, states that the German Government will apply the Declaration of London, provided its provisions are not disregarded by other belligerents.

Nr. 1898. Der amerikanische Botschafter in London übermittelt der amerikanischen Regierung am 27. August 1914 eine Note der britischen Regierung vom 22. August 1914 zur Frage der Inkraftsetzung der Londoner Seekriegsrechtserklärung sowie die Order in Council vom 20. August 1914.

(**E. W. 1,** S. 6.)

Ambassador *W. H. Page* to the Secretary of State.

American Embassy, London, August 27, 1914.

Sir: I have the honor to transmit herewith inclosed a copy of the note from the Foreign Office I telegraphed you on the 26th instant (No. 483) defining the attitude of the British Government with regard to the so-called Declaration of London, 1909, together with a copy of a memorandum which accompanied the note, and a copy of the King's order in council of the 20th instant relating to this matter.

There will also be found attached a copy of a circular note I have just received from the Foreign Office relating to the same order in council and to the rules governing the proceedings in the British prize courts. Another copy of the King's order in council of the 20th instant, which accompanied the circular note, is inclosed herewith, and there will be found as well, in the pouch which accompanies this dispatch, six copies of the Prize Court Rules.

I have, etc., *Walter Hines Page.*

(Enclosure 1.)

The Minister for Foreign Affairs to Ambassador *W. H. Page.*

Foreign Office, London, August 22, 1914.

Your Excellency: On the 7th instant you were so good as to address to me a note inquiring, pursuant to instructions from the Secretary of State

at Washington, whether His Majesty's Government were willing to agree that the laws of naval warfare, as laid down by the Declaration of London, 1909, should be applicable to naval warfare during the present European conflict, provided that the Governments with whom Great Britain is at war, or with whom her relations are not normal, also agree to such application.

Your Excellency added that it was the belief of your Government that the acceptance of these laws by the belligerents would prevent the possibility of grave misunderstandings as to the relations between belligerents and neutrals.

I have the honor to inform Your Excellency that His Majesty's Government, who attach great importance to the views expressed in Your Excellency's note and are animated by a keen desire to consult so far as possible the interests of neutral countries, have given this matter their most careful consideration and have pleasure in stating that they have decided to adopt generally the rules of the declaration in question, subject to certain modifications and additions which they judge indispensable to the efficient conduct of their naval operations. A detailed explanation of these additions and modifications is contained in the inclosed memorandum.

The necessary steps to carry the above decision into effect have now been taken by the issue of an order in council, of which I have the honor to inclose copies herein for Your Excellency's information and for transmission to your Government.

I may add that His Majesty's Government, in deciding to adhere to the rules of the Declaration of London, subject only to the aforesaid modifications and additions, have not waited to learn the intentions of the enemy Governments, but have been actuated by a desire to terminate at the earliest moment the condition of uncertainty which has been prejudicing the interests of neutral trade.

I have, etc., *E. A. Crowe.*

(Enclosure 2.)

Memorandum.

1. The lists of contraband already published by His Majesty are substituted for those contained in Articles 22 and 24 of the Declaration of London. Lists similar to those published by His Majesty have been issued by the French Government.

2. His Majesty's Government do not feel able to accept in its entirety the rule laid down in Article 38 of the Declaration. It has been the practice of the British Navy to treat as liable to capture a vessel which carried contraband of war with false papers if she was encountered on the return voyage, and to this exception His Majesty's Government feel it necessary to adhere.

3. The peculiar conditions in the present war due to the fact that neutral ports such as Rotterdam are the chief means of access to a large part of Germany and that exceptional measures have been taken in the enemy country for the control by the Government of the entire supply of foodstuffs have convinced His Majesty's Government that modifications are required in the applications of Articles 34 and 35 of the Declaration. These modifications are contained in paragraphs 3 and 5 of the accompanying Order in Council.

4. Article 15 of the Declaration contains a provision as to presumptive knowledge of the blockade in certain cases if the vessel has sailed from a neutral port. No mention is made of British or allied enemy ports. These comissions are supplied by Article 4 of the Order in Council.

5. The Order in Council also provides for the acceptance of the very valuable commentary on the Declaration which was embodied in the General Report prepared by Monsieur *Renault*.

Nr. 1899. Lansing an den deutschen Botschafter in Washington. Amerikanische Denkschriften vom 19. September 1914 über die allgemeinen Regeln, welche die Vereinigten Staaten von Amerika gegenüber bewaffneten Handelsschiffen in amerikanischen Häfen und gegenüber solchen Handelsschiffen anwenden wollen, die verdächtig sind, Kriegsschiffen Kriegführender von amerikanischen Häfen aus Vorräte zuzuführen.

(**E. W. 2,** S. 43—44.)

The Acting Secretary of State to the German Ambassador*).

Department of State, Washington, September 19, 1914.

Dear Mr. Ambassador: I am inclosing for your information two memoranda, which the Department has issued to-day and which define the general rules which this Government will follow in dealing with cases involving the status of armed merchant vessels visiting American ports, and with cases of merchant vessels suspected of carrying supplies to belligerent warships from American ports.

I am, etc., *Robert Lansing.*

(Enclosure 1.)

The Status of Armed merchant vessels.

A. A merchant vessel of belligerent nationality may carry an armament and ammunition for the sole purpose of defense without acquiring the character of a ship of war.

B. The presence of an armament and ammunition on board a merchant vessel creates a presumption that the armament is for offensive purposes, but the owners or agents may overcome this presumption by evidence showing that the vessel carries armament solely for defense.

C. Evidence necessary to establish the fact that the armament is solely for defense and will not be used offensively, whether the armament be mounted or stowed below, must be presented in each case independently at an official investigation. The result of the investigation must show conclusively that the armament is not intended for, and will not be used in, offensive operations.

Indications that the armament will not be used offensively are:

1. That the caliber of the guns carried does not exceed six inches.
2. That the guns and small arms carried are few in number.
3. That no guns are mounted on the forward part of the vessel.
4. That the quantity of ammunition carried is small.
5. That the vessel is manned by its usual crew, and the officers are the same as those on board before war was declared.

*) Same to the British, French, and Japanese Ambassadors in Washington, and the Belgian Minister.

6. That the vessel intends to and actually does clear for a port lying in its usual trade route, or a port indicating its purpose to continue in the same trade in which it was engaged before war was declared.
7. That the vessel takes on board fuel and supplies sufficient only to carry it to its port of destination, or the same quantity substantially which it has been accustomed to take for a voyage before war was declared.
8. That the cargo of the vessel consists of articles of commerce unsuited for the use of a ship of war in operations against an enemy.
9. That the vessel carries passengers who are as a whole unfitted to enter the military or naval service of the belligerent whose flag the vessel flies, or of any of its allies, and particularly if the passenger list includes women and children.
10. That the speed of the ship is slow.

D. Port authorities, on the arrival in a port of the United States of an armed vessel of belligerent nationality, claiming to be a merchant vessel, should immediately investigate and report to Washington on the foregoing indications as to the intended use of the armament, in order that it may be determined wheter the evidence is sufficient to remove the presumption that the vessel is, and should be treated as, a ship of war. Clearance will not be granted until authorized from Washington, and the master will be so informed upon arrival.

E. The conversion of a merchant vessel into a ship of war is a question of fact which is to be established by direct or circumstantial evidence of intention to use the vessel as a ship of war.

Department of State, September 19, 1914.

(Enclosure 2.)

Merchant vessels suspected of Carrying supplies to belligerent vessels.

1. A base of operations for belligerent warships is presumed when fuel or other supplies are furnished at an American port to such warships more than once within three months since the war began, or during the period of the war, either directly or by means of naval tenders of the belligerent or by means of merchant vessels of belligerent or neutral nationality acting as tenders.

2. A common rumor or suspicion that a merchant vessel laden with fuel or other naval supplies intends to deliver its cargo to a belligerent warship on the high seas, when unsupported by direct or circumstantial evidence, imposes no duty on a neutral government to detain such merchant vessel even for the purpose of investigating the rumor or suspicion, unless it is known that the vessel has been previously engaged in furnishing supplies to a belligerent warship.

3. Circumstantial evidence, supporting a rumor or suspicion that a merchant vessel intends to furnish a belligerent warship with fuel or other supplies on the high seas, is sufficient to warrant detention of the vessel until its intention can be investigated in the following cases:

a) When a belligerent warship is known to be off the port at which the merchant vessel is taking on cargo suited for naval supplies, or when there is a strong presumption that the warship is off the port.

b) When the merchant vessel is of the nationality of the belligerent whose warship is known to be off the coast.

c) When a merchant vessel which has on a previous voyage between ports of the United States and ports of other neutral States failed to have on board at the port of arrival a cargo consisting of naval supplies shipped at the port of departure seeks to take on board a similar cargo.

d) When coal or other supplies are purchased by an agent of a belligerent Government and shipped on board a merchant vessel which does not clear for a port of the belligerent but for a neighboring neutral port.

e) When an agent of a belligerent is taken on board a merchant vessel having a cargo of fuel or other supplies and clearing for a neighboring neutral port.

4. The fact that a merchant vessel, which is laden with fuel or other naval supplies, seeks clearance under strong suspicion that it is the intention to furnish such fuel or supplies to a belligerent warship, is not sufficient ground to warrant its detention, if the case is isolated and neither the vessel nor the warship for which the supplies are presumably intended has previously taken on board similar supplies since the war began or within three monts during the period of the war.

5. The essential idea of neutral territory becoming the base for naval operations by a belligerent is repeated, departure from such territory by a naval tender of the belligerent or by a merchant vessel in belligerent service which is laden with fuel or other naval supplies.

6. A merchant vessel, laden with naval supplies, clearing from a port of the United States for the port of another neutral nation, which arrives at its destination and there discharge its cargo, should not be detained if, on a second voyage, it takes on board another cargo of similar nature.

In such a case the port of the other neutral nation may be a base for the naval operations of a belligerent. If so and even if the fact is notorious, this Government is under no obligation to prevent the shipment of naval supplies to that port. Commerce in munitions of war between neutral nations can not as a rule be a basis for a claim of unneutral conduct, even though there is a strong presumption or actual knowledge that the neutral State, in whose port the supplies are discharged, is permitting its territory to be used as a base of supply for belligerent warships. The duty of preventing an unneutral act rests entirely upon the neutral State whose territory is being used as such a base.

In fact this principle goes further in that, if the supplies were shipped directly to an established naval base in the territory or under the control of a belligerent, this Government would not be obligated by its neutral duty to limit such shipments or detain or otherwise interfere with the merchant vessels engaged in that trade. A neutral can only be charged with unneutral conduct when the supplies, furnished to a belligerent warship, are furnished directly to it in a port of the neutral or throug naval tenders or merchant vessels acting as tenders departing from such port.

7. The foregoing propositions do not apply to furnishing munitions of war included in absolute contraband, since in no event can a belligerent warship take on board such munitions in neutral waters, nor should it be permitted to do so indirectly by means of naval tenders or merchant vessels acting as such tenders.

Department of State, September 19, 1914.

Nr. 1900. Englische Konterbande-Proklamation vom 21. September 1914. („The London Gazette“ vom 22. September 1914.)

By the King.

Specifiing certain additional Articles which are to be treated as Contraband of War.

George R. I.

Whereas on the fourth day of August last We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as Contraband of War during the War between Us and the German Emperor:

And whereas on the twelfth day of August last We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the War between Us and the Emperor of Austria, King of Hungary:

And whereas by an Order in Council of the twentieth day of August, 1914, it was ordered that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force as if the same had been ratified by Us:

And whereas it is desirable to add to the list of articles to be treated as Contraband of War during the present War:

And whereas it is expedient to introduce certain further modifications in the Declaration of London as adopted and put in force:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until We do give further public notice, the articles enumerated in the Schedule hereto will, notwithstanding anything contained in Article 28 of the Declaration of London, be treated as conditional Contraband.

Schedule.

Copper, unwrought.
Lead, pig, sheet, or pipe.
Glycerine.
Ferrochrome.
Haematite Iron Ore.
Magnetic Iron Ore.
Rubber.
Hides and Skins, raw or rough tanned (but not including dressed leather).

Given at Our Court at Buckingham Palace, this Twenty-first day of September, in the Year of our Lord one thousand nine hundred and fourteen, and in the Fifth Year of Our Reign.

Nr. 1901. Deutsche Denkschrift vom 10. Oktober 1914 über die Stellung Englands und Frankreichs zur Londoner Seekriegsrechtserklärung. („Norddeutsche Allgemeine Zeitung“ Nr. 262, 1. Ausgabe vom 25. 10. 1914.)

Nach einer Order in Council vom 20. August 1914 will die britische Regierung während des gegenwärtigen Krieges die Londoner Seekriegsrechtserklärung vom 26. Februar 1909 mit einigen Zusätzen und Abänderungen beobachten. Diese Zusätze und Abänderungen sind aber derart, daß sie die Londoner Erklärung in wesentlichen Punkten aufheben und dadurch gleichzeitig in das geltende Völkerrecht eingreifen. Weitere sehr erhebliche Abweichungen von der Londoner Erklärung sind in einer britischen Proklamation vom 21. September 1914 enthalten.

I.

Die einschneidendste Abänderung der Londoner Erklärung findet sich in den Bestimmungen über die relative Konterbande unter Nr. 3 und 5 der Order in Council.

Die Londoner Erklärung bestimmt im Art. 33, daß der Begriff der relativen Konterbande nur dann Anwendung findet, wenn die verfrachteten Gegenstände für den Gebrauch der Verwaltungsstellen oder der Streitmacht des feindlichen Staates bestimmt sind. Ferner soll nach Art. 35 der Begriff der relativen Konterbande ohne weiteres ausgeschlossen sein, wenn sich das Schiff auf der Fahrt nach einem neutralen Hafen befindet.

Diese Bestimmungen, die im wesentlichen dem geltenden Völkerrecht entsprechen und auf einer billigen Abwägung der Interessen der kriegführenden Staaten einerseits und der neutralen Staaten anderseits beruhen, sind durch die Order in Council so gut wie aufgehoben worden. Denn nach Nr. 3 der Order soll die Vermutung für die feindliche Bestimmung der Güter in jedem Falle Platz greifen, wo der Empfänger der Ware unter der Kontrolle der Behörden des feindlichen Staates steht; das bedeutet aber nichts anderes, als daß jede nach dem feindlichen Lande gerichtete Sendung der Beschlagnahme ausgesetzt ist, da sich dort sämtliche Bewohner unter der Kontrolle der Landesbehörden befinden. Diese Bestimmung erhält ihre Ergänzung in Nr. 5 der Order, wonach auch das auf der Fahrt nach einem neutralen Hafen befindliche Schiff wegen relativer Konterbande aufgebracht werden kann; hier wird also entgegen dem Art. 35 der Londoner Erklärung der nur auf die absolute Konterbande anwendbare Begriff der fortgesetzten Reise auf die relative Konterbande ausgedehnt.

Auf diese Weise werden die milderen Regeln der Londoner Erklärung für die relative Konterbande beseitigt und letztere im Ergebnis der absoluten Konterbande völlig gleichgestellt. Damit wird der zur Versorgung der Bevölkerung eines kriegführenden Staates bestimmte neutrale Handel mit Gegenständen der relativen Konterbande, also insbesondere mit Lebensmitteln, der im geltenden Völkerrecht als legitim anerkannt ist, nahezu illusorisch gemacht und so das Interesse des Kriegführenden wie der Neutralen in völkerrechtswidriger Weise verletzt. Wie die Ereignisse auf dem Seekriegsschauplatz beweisen, geht England nach dieser Richtung in der rücksichtslosesten Weise vor, dergestalt, daß es sogar den für die Nachbarländer Deutschlands bestimmten Bedarf in Kontrolle nimmt und dadurch auch deren Versorgung in Frage stellt.

II.

Die britische Regierung glaubt sich über die in den Artt. 22, 24 und 28 der Londoner Erklärung enthaltenen Listen der absoluten Konterbande, der relativen Konterbande und der nicht als Konterbande zu erklärenden Waren (Freiliste) ohne weiteres hinwegsetzen zu können. Sie hat in ihrer durch die Order in Council unter Nr. 1 aufrechterhaltenen Konterbandeerklärung vom 5. August 1914 Luftfahrzeuge und deren Bestandteile als absolute Konterbande bezeichnet, während diese nach Art. 24 Nr. 8 der Londoner Erklärung nur als relative Konterbande angesehen werden können. Vor allem aber hat sie in der Proklamation vom 21. September 1914 Gummi, Häute und Felle sowie verschiedene Sorten Eisenerz als relative Konterbande erklärt, obwohl diese Gegenstände nicht oder doch nur sehr mittelbar für kriegerische Zwecke verwendbar sind und daher auf der Freiliste des Art. 28 stehen (vgl. Nr. 3, 4, 6). Damit wird zugleich allgemein anerkannten Regeln des Völkerrechts ins Gesicht geschlagen, wonach der neutrale Handel mit Gegenständen ausschließlich friedlichen Gebrauchs durch die Kriegführenden nicht gestört werden darf.

III.

Eine weitere Verschärfung der Bestimmungen über die Konterbande ergibt sich aus Nr. 2 der Order in Council. Denn der Art. 38 der Londoner Erklärung läßt, entsprechend dem geltenden Völkerrecht, eine Beschlagnahme des Schiffes wegen Konterbande nur zu, solange sich diese an Bord befindet; dagegen will die britische Regierung, wenn die Beförderung der Konterbande unter Mitnahme falscher Papiere erfolgt ist, das Schiff während der ganzen Dauer der Reise mit Beschlag belegen. Auf diese Weise ist der neutrale Schiffsverkehr mit dem feindlichen Gebiet andauernden Schikanen ausgesetzt, da das Schiff nicht nur auf Grund einer offenkundigen Tatsache, nämlich des Vorhandenseins von Konterbande, sondern auch auf Grund einer häufig nicht nachweisbaren Behauptung über sein früheres Verhalten aufgebracht werden wird.

IV.

Durch die Bestimmung in Nr. 4 der Order in Council wird die Wegnahme wegen Blockadebruchs in unbilliger Weise erweitert, da hiernach die Vermutung für die Kenntnis der Blockade auch dann eintreten soll, wenn das Schiff nach Ablauf einer gewissen Zeit seit der Bekanntgabe der Blockade eines feindlichen Hafens an die dortigen Ortsbehörden einen anderen feindlichen Hafen verlassen hat. Durch diese Bestimmung will die britische Regierung die Behörden des feindlichen Staates über die durch das Völkerrecht gezogenen Grenzen hinaus in den Dienst der eigenen Seestreitkräfte stellen und diesen Dienst durch die Wegnahme neutraler Schiffe erzwingen.

V.

Nach einem in der Londoner Erklärung bestätigten völkerrechtlichen Grundsatz dürfen an Bord eines neutralen Kauffahrteischiffs nur solche Personen zu Kriegsgefangenen gemacht werden, die bereits in die feindliche Streitmacht eingereiht sind. Dieser Satz ergibt sich aus dem Art. 45 Abs. 1 Nr. 2 in Verbindung mit dem Art. 47 und ist im Generalberichte des Redaktionsausschusses der Londoner Konferenz im ersten Absatz der Bemerkungen zum Art. 45 noch näher ausgeführt worden; denn wie der Generalbericht bemerkt, war sowohl aus juristischen wie aus praktischen Gründen die ganze Konferenz darin einig, daß nur aktive Militärpersonen, nicht aber solche Personen, die sich, wie beispielsweise Reservisten, zur Erfüllung ihrer allgemeinen Dienstpflicht nach der Heimat begeben, der Gefangennahme auf einem neutralen Schiff unterliegen. Obwohl die britische Order in Council die beiden Artikel ebenso wie die Bemerkungen des Generalberichts als für die Regierung verbindlich anerkannt hat, haben doch die britischen Seestreitkräfte deutsche Wehrpflichtige, die nicht in die Streitmacht eingereiht waren, von Kauffahrteischiffen der niederländischen, der norwegischen und der italienischen Flagge weggenommen und zu Kriegsgefangenen gemacht. Auf diese Weise haben sie nicht nur die in der Londoner Erklärung wiedergegebenen völkerrechtlichen Grundsätze, sondern auch die eigenen staatsrechtlichen Normen gröblich verletzt.

Nach einem im „Journal officiel“ vom 26. August 1914 veröffentlichten Dekret des Präsidenten der französischen Republik hat sich Frankreich auf denselben Standpunkt gestellt wie Großbritannien in seiner Order in Council. Auch haben die französischen Seestreitkräfte in gleicher Weise wie die britischen wehrpflichtige Deutsche von neutralen Schiffen, insbesondere von niederländischen und spanischen, weggenommen.

Die Verordnungen und darüber hinausgehend die Seestreitkräfte Großbritanniens und Frankreichs setzen sich hiernach über die in der Londoner Seekriegsrechtserklärung niedergelegten Regeln in willkürlicher Weise hinweg.

Sie verfolgen ausgesprochenermaßen den Zweck, durch Lahmlegung des neutralen Handels nicht nur die Kriegführung, sondern auch die Volkswirtschaft ihrer Gegner zu treffen und greifen dabei in unzulässiger Weise sowohl in den legitimen Handel der Neutralen mit dem Gegner als auch in den Handel der Neutralen untereinander ein. Die Londoner Erklärung ist zwar bisher nicht ratifiziert worden; wie indes die Bevollmächtigten der Signatarmächte, mit Einschluß der britischen und französischen, in der einleitenden Bestimmung ausdrücklich festgestellt haben, entsprechen die Regeln der Londoner Erklärung im wesentlichen den allgemein anerkannten Grundsätzen des internationalen Rechtes. Die von Großbritannien und Frankreich beliebten Verletzungen der Londoner Erklärungen stellen sich daher zugleich als Verletzungen des Völkerrechts dar, die um so schwerer ins Gewicht fallen, als Großbritannien in Kriegen, in denen es neutral war, wie beispielsweise im russisch-japanischen Kriege, gegen solche Rechtsverletzungen auf das nachdrücklichste Einspruch erhoben hat (vgl. das englische Blaubuch Russia Nr. 1, 1905, Correspondence respecting Contraband of War S. 8 ff.).

Die Kaiserlich deutsche Regierung hat bisher die Bestimmungen der Londoner Erklärung streng beobachtet, auch deren Inhalt in der deutschen Prisenordnung vom 30. September 1909 (Reichs-Gesetzbl. 1914 S. 275) sinngetreu wiedergegeben; an dieser Haltung hat sie sich selbst durch die flagranten Rechtsverletzungen ihrer Gegner nicht irre machen lassen. Sie muß sich indes die Frage vorlegen, ob sie an diesem Standpunkt noch länger festhalten kann, wenn die feindlichen Mächte das von ihnen eingeschlagene Verfahren fortsetzen und die neutralen Mächte sich solche Neutralitätsverletzungen zuungunsten deutscher Interessen gefallen lassen. Für die deutsche Regierung würde es daher von Wert sein, zu erfahren, welche Stellung die neutralen Mächte zu dem völkerrechtswidrigen Verhalten Großbritanniens und Frankreichs einzunehmen gedenken, und ob sie insbesondere gegen die an Bord ihrer Schiffe vorgenommenen Gewaltakte an deutschen Personen und deutschem Gut einschreiten wollen.

Berlin, den 10. Oktober 1914.

Nr. 1902. Zirkular vom 15. Oktober 1914 des Staatsdepartements in Washington über Neutralität und Handel mit Konterbande. (Supplement to the American Journal of International Law. Vol. 9, 1915, Official Documents. New York. S. 124 ff.)

The Department of State has received numerous inquiries from American merchants and other persons as to whether they could sell to governments or nations at war contraband articles without violating the neutrality of the United States, and the Department has also received complaints that sales of contraband were being made on the apparent supposition that they were unneutral acts which this Government should prevent.

In view of the number of communications of this sort which have been received it is evident that there is a widespread misapprehension among the people of this country as to the obligations of the United States as a neutral nation in relation to trade in contraband and as to the powers of the executive branch of the government over persons who engage in it. For this reason it seems advisable to make an explanatory statement on the subject for the information of the public.

In the first place it should be understood that, generally speaking, a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing

this by any rule of international law, by any treaty provisions, or by any statute of the United States. It makes no difference whether the articles sold are exclusively for war purposes, such as firearms, explosives, etc., or are foodstuffs, clothing, horses, etc., for the use of the army or navy of the belligerent.

Furthermore, a neutral government is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens do not in the least affect the neutrality of the United States.

It is true that such articles as those mentioned are considered contraband and are, outside the territorial jurisdiction of a neutral nation, subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war; the inability, however, imposes on the neutral government no obligation to prevent the sale.

Neither the President nor any executive department of the government possesses the legal authority to interfere in any way with trade between the people of this country and the territory of a belligerent. There is no act of Congress conferring such authority or prohibiting traffic of this sort with European nations, although in the case of neighboring American Republics Congress has given the President power to proclaim an embargo on arms and ammunition when in his judgment it would tend to prevent civil strife.

For the Government of the United States itself to sell to a belligerent nation would be an unneutral act, but for a private individual to sell to a belligerent any product of the United States is neither unlawfull nor unneutral, nor within the power of the Executive to prevent or control.

The foregoing remarks, however, do not apply to the outfitting or furnishing of vessels in American ports or of military expeditions on American soil in aid of a belligerent. These acts are prohibited by the neutrality laws of the United States.

Department of State, October 15, 1914.

Nr. 1903. Amerikanische Note vom 22. Oktober 1914 an England mit der Zurückziehung der amerikanischen Anregung vom 6. August 1914 hinsichtlich der Londoner Seekriegsrechtserklärung; Amerika behält sich die Wahrung seiner Rechte vor.

(**E. W. 1,** S. 8.)

The Acting Secretary of State to Ambassador *W. H. Page.*

(Telegram.)

Department of State, Washington, October 22, 1914. 4 p. m.

Your No. 864, October 19, Declaration of London.

Inasmuch as the British Government consider that the conditions of the present European conflict make it impossible for them to accept without modification the Declaration of London, you are requested to inform His Majesty's Government that in the circumstances the Government of the United States feels obliged to withdraw its suggestion that the Declaration of London be adopted as a temporary code of naval warfare to be observed

by belligerents and neutrals during the present war; that therefore this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States irrespective of the provisions of the Declaration of London; and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with by the authorities of His Britannic Majesty's Government.

Lansing.

Nr. 1904. Amerikanische Note vom 24. Oktober 1914 an Deutschland, Rußland, Oesterreich-Ungarn, Frankreich und Belgien mit Bezug auf die Stellung Amerikas zu seiner Anregung vom 6. August 1914 hinsichtlich der Londoner Seekriegsrechtserklärung.

(**E. W. 1,** S. 8.)

The Acting Secretary of State to Ambassador *Gerard.*
(Telegram.—Paraphrase.)

Department of State, Washington, October 24, 1914. 5 p. m.

Referring to Department's August 6, 1 p. m., and Embassy's October 22, relative to the Declaration of London, Mr. *Lansing* instructs Mr. *Gerard* to inform the German Government that the suggestion of the department to belligerents as to the adoption of declaration for sake of uniformity as to a temporary code of naval warfare during the present conflict has been withdrawn because some of the belligerents are unwilling to accept the declaration without modifications and that this Government will therefore insist that the rights and duties of the Government and citizens of the United States in the present war be defined by existing rules of international law and the treaties of the United States without regard to the provisions of the declaration and that the Government of the United States reserves to itself the right to enter a protest or demand in every case in which the rights and duties so defined are violated or their free exercise interfered with by the authorities of the belligerent governments.

Nr. 1905. Britische Konterbande-Proklamation vom 29. Oktober 1914. („The London Gazette“ vom 30. Oktober 1914.)

By the King.

A Proclamation Revising the List of Contraband of War.

George R. I.

Whereas on the fourth day of August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

Whereas on the twelfth day of August, 1914, We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

Whereas on the twenty-first day of September, 1914, Whe did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas it is expedient to consolidate the said lists and to make certain additions thereto:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamations of the fourth day of August and the twenty-first day of September aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until We do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

Schedule I.

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Sulphuric acid.
5. Gun mountings, limber boxes, limbers, military wagons, field forges and their distinctive component parts.
6. Range-finders and their distinctive component parts.
7. Clothing and equipment of a distinctively military character.
8. Saddle, draught, and pack animals suitable for use in war.
9. All kinds of harness of a distinctively military character.
10. Articles of camp equipment and their distinctive component parts.
11. Armour plates.
12. Haematite iron ore and haematite pig iron.
13. Iron Pyrites.
14. Nickel ore and nickel.
15. Ferrochrome and chrome ore.
16. Copper, unwrought.
17. Lead, pig, sheet, or pipe.
18. Aluminium.
19. Ferro-silica.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.
22. Aeroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognisable as intended for use in connection with balloons and aircraft.
23. Motor vehicles of all kinds and their component parts.
24. Motor tyres; rubber.
25. Mineral oils and motor spirit, except lubricating oils.
26. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

Schedule II.

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all all kinds; floating docks, parts of docks, and their component parts.

7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.

8. Fuel, other than mineral oils. Lubricants.

9. Powder and explosives not specially prepared for use in war.

10. Sulphur.

11. Glycerine.

12. Horseshoes and shoeing materials.

13. Harness and saddlery.

14. Hides of all kinds, dry or wet: pigskins, raw or dressed; leather undressed or dressed, suitable for saddlery, harness, or military boots.

15. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Given at Our Court at Buckingham Palace, this twenty-ninth day of October, in the year of our Lord one thousand nine hundred and fourteen, and in the fifth year of Our Reign.

Nr. 1906. Brief des britischen Gesandten im Haag an den niederländischen Minister für auswärtige Angelegenheiten über die britische Nordseesperre. („Diplomatieke bescheiden betreffende de vaart in de Noordzee en het Kanaal in verband met den oorlogstoestand". 'sGravenhage, Martinus Nijhoff, 1915. Seite 18—20.)

November 3rd 1914.

Monsieur le Ministre,

I have the honour to inform Your Excellency, by direction of Sir *Edward Grey*, that the Admiralty are issuing the following announcement:

„During the last week the Germans have scattered mines indiscriminately in the open sea on the main trade route from America to Liverpool via the North of Ireland. Peaceful merchant ships have already been blown up with loss of life by this agency. The White Star Liner „Olympic" escaped disaster by pure good luck. But for warnings given by British cruisers other British and neutral merchant and passenger vessels would have been destroyed. These mines cannot have been laid by any German ship of war. They have been laid by some merchant vessel flying a neutral flag which has come along the trade route as if for purposes of peaceful commerce and, while profiting the full by the immunity enjoyed by neutral merchant ships, has wantonly and recklessly endangered the lives of all who travel on the sea, regardless of whether they are friend or foe, civilian or military in character.

Mine-laying under a neutral flag and reconnaissance conducted by trawlers, hospital ships and neutral vessels are the ordinary features of German naval warfare. In these circumstances, having regard to the great interests entrusted to the British Navy, to the safety of peaceful commerce on the high seas and to the maintenance within limits of international trade between neutral countries, the Admiralty feel it necessary to adopt exceptional measures appropriate to the novel conditions under which this war is being waged. They therefore give notice: that the whole of the North Sea must be considered a military area. Within this area merchant shipping of all kinds, traders of all countries, fishing craft and all other vessels will be exposed to the gravest dangers from the mines which it has been necessary to lay and from the warships searching vigilantly by night and day for suspicious craft. All merchant and fishing vessels of every description are hereby warned of the dangers they encounter by

entering this area except in strict accordance with Admiralty directions. Every effort will be made to convey this warning to neutral countries and to vessels on the sea, but from November 5th onwards the Admiralty announce that all ships passing a line drawn from the Northern point of the Hebrides through Faroe Islands to Iceland do so at their own peril. Ships of all countries wishing to trade to and from Norway, the Baltic, Denmark and Holland are advised to come if inward bound, by the English Channel and the Straits of Dover. There they will be given sailing directions which will pass them safely so far as Great Britain is concerned up the East Coast of England to Farne Island, whence a safe route will if possible be given to the Lindesnaes Lighthouse. From this point they should turn North or South according to their destination keeping as near the coast as possible. The converse applies to vessels outward bound. By strict adherence to these routes the commerce of all countries will be able to reach its destination in safety, so far as Great Britain is concerned, but any straying, even for a few miles, from the course thus indicated may be followed by fatal consequences."

I avail myself, etc.

Alan Johnstone.

Nr. 1907. Deutsche Denkschrift vom 15. Dezember 1914 an Amerika über die Lieferung von Kohlen an die Kriegsschiffe kriegführender Staaten.

(**E. W. 2,** S. 31.)

The German Ambassador to the Secretary of State.

(Translation.)

Imperial German Embassy, Washington, Dezember 15, 1914.

Mr. Secretary of State: The position taken by the Government of the United States as to the delivery of coal and other necessaries to warships of the belligerent states constituting a violation of neutrality is, in the opinion of the Imperial German Government, untenable in international law. The Imperial Government has set forth its position on this point in a memorandum which, in compliance with instructions, I have the honor to forward to your Excellency.

The Imperial Government indulges the hope that the Government of the United States, upon perusal of the memorandum, will concur in the view of the Imperial Government and, within the limits drawn in the memorandum, will grant free clearance to vessels that should supply German warships with coal. I should be thankful to your Excellency for a communication in this respect.

Accept, etc.

J. Bernstorff.

(Enclosure—Translation.)

Memorandum.

Under the general principles of international law no exception can be taken to neutral states letting war material go to Germany's enemies from or through their territory. This is accordant with Article 7 of the Hague Conventions of October 18, 1907, concerning the rights and duties of neutrals in naval and land war. If, however, a state avails itself of that liberty in favor of her enemies, then it must, in accordance with a rule generally

accepted in international law and confirmed in Article 9 of the two Conventions above cited, place no obstacle to the German military force ordering contraband from or through its territory.

The neutrality declaration of the United States takes this construction into full account when it allows contraband of war to be delivered equally to all belligerents.

„All persons may lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and ammunitions of war and other articles ordinarily known as contraband of war."

The public declaration of the State Department of the United States of October 15, 1914, on the subject of neutrality and contraband, gave the widest acceptation to the above stated principle.

In spite thereof, various American port authorities have denied clearance from American ports to vessels of the merchant marine which would carry needed supplies or fuel to German warships either on the high seas or in other neutral ports.

According to the principles of international law above cited a neutral State need not prevent furnishing supplies of this character; neither can it, after allowing the adversaries to be furnished with contraband, either detain or in any way disable a merchant ship carrying such a cargo. Only when contraband trade would turn the ports into bases of German military operations would the unilateral stoppage of the trade of those vessels become a duty. Such, perhaps, would be the case if the Germans kept coal depots in the ports or if the vessels called at the port in regular voyages on the way to German naval forces. But it stands to reason that one merchant vessel occasionally sailing with coal or supplies for German warships does not turn a neutral port into a German point of support contrary to neutrality.

Our enemies draw from the United States contraband of war, especially arms, worth several billions of marks. This in itself they are authorized to do. But if the United States will prevent our warships occasionally drawing supplies from its ports, a great injustice grows out of the authorization, for it would amount to an unequal treatment of the belligerents and constitute a breach of the generally accepted rules of neutrality to Germany's detriment.

Nr. 1908. Amerikanische Antwort vom 24. Dezember 1914 auf die deutsche Denkschrift vom 15. Dezember 1914 über die Lieferung von Kohlen an die Kriegsschiffe kriegführender Staaten.

(**E. W. 2,** S. 31—32.)

The Secretary of State to the German Ambassador.

Department of State, Washington, December 24, 1914.

Excellency: I have the honor to acknowledge the receipt of your note of the 15th instant enclosing, by direction of your Government, a copy of a memorandum of the Imperial Government on the subject of the delivery of coal and other necessaries to warships of belligerent States. In the course of the memorandum your Government takes the opportunity to set forth its attitude toward traffic in contraband of war by citizens of neutral countries. I take note, therefore, of your Government's statement that „under the general principles of international law no exception can be taken to neutral States letting war material go to Germany's enemies from or through neutral

territory", and that the adversaries of Germany in the present war are, in the opinion of the Imperial Government, authorized to „draw from the United States contraband of war, especially arms, worth several billions of marks". These principles, as you state, have been accepted by the United States Government in the statement issued by the Department on October 15 last, entitled „Neutrality and Trade in Contraband". Acting in conformity with propositions there set forth this Government has itself taken no part in contraband traffic and so far as possible has lent its influence toward equal treatment for all belligerents in the matter of purchasing arms and ammunition in the United States. Complaint, however, appears to be made by the Imperial German Government of the refusal of clearance by American authorities to merchant vessels intending to furnish fuel and supplies to German warships on the high seas or in neutral ports.

In reply I desire to call to your attention that the Government is not aware that any merchant vessel has been refused a clearance on these grounds during the present war, although certain temporary detentions have been found to be necessary for the purpose of investigating the bona fides of the alleged destinations of particular vessels and the intentions of their owners or masters. This has been done in an effort to carry out the principles of international law and the declaration of treaties with respect to coal supplies for belligerent warships and the use of neutral ports as bases of naval operations. Although as a rule there is on the part of the nationals of neutral countries entire freedom of trade in arms, ammunition, and other articles of contraband, nevertheless the Imperial German Government will recall that international law and the treaties declaratory of its principles make a clear distinction between ordinary commerce in contraband of war and the occasional furnishing of warships at sea or in neutral ports. In this relation I venture to advert to Articles 18 to 20, inclusive, of Hague Convention No. 13, 1907. From these articles it will be observed that a warship which has received fuel in a port belonging to a neutral power may not within the succeeding three months replenish her supply in a port of the same power. It is, I am sure, only necessary to call your attention to these articles to make it perfectly clear that if a number of merchant vessels may at short intervals leave neutral ports with cargoes of coal for transshipment to belligerent warships at sea, regardless of when the warships last received fuel in the ports of the same neutral power, the conventional prohibition would be nullified, and the three months' rule rendered useless. By such practice a warship might remain on its station engaged in belligerent operations without the inconvenience of repairing to port for fuel supplies.

Furthermore, Article 5, of the same Convention, forbids belligerents to use neutral ports and waters as a base of naval operations against their adversaries. As stated in the Department's statement on „Merchant Vessels Suspected of Carrying Supplies to Belligerent Vessels", dated September 19 last (a copy of which is enclosed), the essential idea of neutral territory becoming the base for naval operations by a belligerent is in the opinion of this Government repeated departure from such territory of merchant vessels laden with fuel or other supplies for belligerent warships at sea. In order to ascertain the vessels which are thus operating, the Government has been obliged to investigate certain cases in order that it might determine whether there have been or are about to be repetitions of such acts. But in all respects equality of treatment has been observed toward all merchant vessels suspected of carrying supplies to belligerent vessels.

It is hardly necessary to recount in this note the provisions of the Hague Conventions in regard to the fitting out or arming of vessels within the jurisdiction of a neutral power, or the stipulations in the same Con-

ventions regarding the departure of vessels intended to cruise or engage in hostile operations which have been adopted entirely, or in part, for such use within neutral jurisdiction. To the extent of these restrictions the furnishing of munitions of war included in absolute contraband is prohibited in neutral waters, and therefore should not be permitted indirectly by means of naval tenders, or merchant vessels acting as tenders, carrying such materials from a neutral jurisdiction to belligerent warships at sea.

It is not necessary in further reply to the memorandum of the Imperial German Government to advert in detail to other provisions of the Hague Conventions or to other rules of international law, for no particular cases have been adduced as a ground for your Government's complaint. If, however, they will specify the vessels which they must have in mind as having been accorded unequal treatment, the Department will be glad to give further consideration to the memorandum of your Government in the light of actual facts. It is then sufficient to say for the present that in the pursuance of the policy to carry out the principles abowe referred to, which is part of the program of this Government to preserve and maintain the neutrality of the United States, all merchant vessels suspected of carrying supplies to belligerent warships at sea have been subjected, and will continue to be subjected, to unremitting and painstaking investigation. Such action can not, it is believed, be fairly taken to amount to „unequal treatment of the belligerents and constitute a breach of the generally accepted rules of neutrality to Germany's detriment".

Accept, etc., *W. J. Bryan.*

Nr. 1909. Amerikanische Note vom 28. Dezember 1914 an England gegen die Unterbindung des amerikanischen Handels mit europäischen Häfen.

(**Misc. 6 [1915]***), S. 1—3.)

Mr. *Page* to Sir *Edward Grey.*

American Embassy, London, December 28, 1914.

Sir,

Under telegraphic instructions from my Government, I have the honour to acquaint you that the present condition of American foreign trade resulting from the frequent seizures and detentions of American cargoes destined to neutral European ports has become so serious as to require a candid statement of my Government's views, in order that His Majesty's Government may be fully informed as to the attitude of the United States towards the policy which has been pursued by His Majesty's authorities during the present war. I am, therefore, directed to communicate to you the following statement and, at the same time, to assure you that it is made in the most friendly spirit and in the belief that frankness will better

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*) **Englisches Weißbuch:**

Miscellaneous. Nr. 6 (1915). Correspondence between His Majesty's Government and the United States Government respecting the rights of belligerents. Presented to both Houses of Parliament by Command of His Majesty. March 1915. London 1915.

(Angeführt als **Misc. 6 [1915].**)

Herausgeber.

serve the continuance of cordial relations between the two countries than a silence which might be misconstrued into acquiescence in a course which my Government cannot but consider to be an infringement upon the rights of American citizens: —

„The Government of the United States have viewed with growing concern the large number of vessels with American goods destined to neutral ports in Europe which have been seized upon the high seas and taken into British ports. During the early days of the war this Government assumed that the policy adopted by the British Government was due to the unexpected outbreak of hostilities and the necessity of immediate action to prevent contraband goods from reaching the enemy. For this reason it was not disposed to judge this policy harshly or protest against it vigorously, although it was manifestly very injurious to American trade with the neutral countries of Europe. This Government, relying confidently upon the high regard which Great Britain has so often exhibited in the past for the rights of other nations, confidently awaited amendment of a course of action which denied to neutral commerce the freedom to which it was entitled by law of nations

„This expectation seemed to be rendered the more assured by the statement of the Foreign Office early in November that the British Government were satisfied with guarantees offered by the Norwegian, Swedish, and Danish Governments as to the nonexportation of contraband goods when consigned to named persons in the territories of those Governments, and that orders had been given to the British fleet and customs authorities to restrict interference with neutral vessels carrying such cargoes so consigned to neutrals after verification of ships' papers and cargoes.

„It is therefore a matter of deep regret that, though nearly five months have passed since the war began, the British Government have not materially changed their policy and do not treat less injuriously ships and cargoes passing between neutral ports in the peaceful pursuit of lawful commerce, which belligerents should protect rather than interrupt. The greater freedom from detention and seizure which was confidently expected to result from consigning shipments to definite consignees rather than ‚to order' is still awaited.

„It is needless to point out to His Majesty's Government, usually the champion of the freedom of the seas and the rights of trade, that peace, not war, is the normal relation between nations, and that the commerce between countries which are not belligerents should not be interfered with by those at war unless such interference is manifestly an imperative necessity to protect their national safety, and then only to the extent that it is a necessity.

„It is with no lack of appreciation of the momentous nature of the present struggle in which Great Britain is engaged, and with no selfish desires to gain undue commercial advantages, that this Government is reluctantly forced to the conclusion that the present policy of His Majesty's Government toward neutral ships and cargoes exceeds the manifest necessity of a belligerent, and constitutes restrictions upon the rights of American citizens on the high seas which are not justified by the rules of international law or required under the principle of selfpreservation.

„The Government of the United States do not intend at this time to discuss the propriety of including certain articles in its lists of absolute and conditional contraband which have been proclaimed by His Majesty. Open to objection as some of these seem to this Government, the chief ground of present complaint is the treatment of cargoes of both classes of articles when bound to neutral ports.

„Articles listed as absolute contraband, shipped from the United States of America and consigned to neutral countries, have been seized and detained on the ground that the countries to which they were destined have not prohibited the exportation of such articles. Unwarranted as such detentions are, in the opinion of this Government, the American exporters of copper are further perplexed by the apparent indecision of the British authorities in applying their own rules for neutral cargoes. For example, a shipment of copper from this country to a specified consignee in Sweden was detained because, as was stated by Great Britain, Sweden had placed no embargo on copper. On the other hand, Italy not only prohibited the export of copper, but, as this Government is informed, put in force a decree that shipments to Italian consignees or „to order" which arrive in ports of Italy cannot be exported or transhipped. The only exception Italy makes is of copper which passes trough that country in transit to another country. In spite of these decrees, however, the British Foreign Office has thus far declined to affirm that copper shipments consigned to Italy will not be molested on the high seas. Seizures are so numerous and delays so prolonged that exporters are afraid to send their copper to Italy. Steamship lines decline to accept it, and insurers refuse to issue policies upon it. In a word, a legitimate trade is being greatly impaired through the uncertainty as to the treatment it may expect at the hands of British authorities.

„The Government of the United States feel that they are abundantly justified in asking for information as to the manner in which the British Government propose to carry out the policy which they have adopted in order that the American Government may determine the steps necessary to protect our citizens engaged in foreign trade in their rights and from the serious losses to which they are liable through ignorance of the hazards to which their cargoes are exposed.

„In the case of the conditional contraband, the policy of Great Britain appears to this Government to be of equal international concern. As evidence, their attention is directed to the fact that a number of American cargoes seized consist of foodstuffs and other articles of common use in all countries which are admittedly relative contraband. In spite of the presumption of innocent use because destined to neutral territory, the British authorities made these seizures and detentions without, so far as the Government of the United States are informed, being in possession of facts which warranted a reasonable belief that the shipments had in reality a belligerent destination as that term is used in international law. Mere suspicion is not evidence, and doubts should be resolved in favour of neutral commerce, not against it. The effect of trade in these articles between neutral nations resulting from interrupted voyages and detained cargoes is not entirely cured by reimbursement of the owners for the damages which they have suffered after investigation has failed to establish an enemy destination. The injury is to American commerce with neutral countries as a whole through the hazard of the enterprise and the repeated diversion of goods from established markets.

„It also appears that cargoes of this character have been seized by the British authorities because of a belief that, though not originally so intended by the shippers, they will ultimately reach the territory of the enemies of Great Britain. Yet this belief is frequently reduced to a mere fear in view of the regulations (?) which have been decreed by the neutral countries to which they are destined on the articles composing the cargoes.

„That a consignment of articles listed as conditional contraband and shipped to a neutral port raises a legal presumption of enemy destination appears to be directly contrary to the doctrine previously held by Great

Britain and thus stated by Lord *Salisbury* during the South African war: .Foodstuffs, though having hostile destination, can be considered as contraband of war only if they are for the enemy forces. It is not sufficient that they are capable of being so used. It must be shown that was in fact their destination at the time of their seizure.'

„In this statement of conditional contraband the views of this Government are in entire accord, and upon this historic doctrine, consistently maintained by Great Britain when a belligerent, as well as a neutral, American shippers were entitled to rely.

„The Government of the United States readily admit full responsibility of the belligerent to visit and search on the high seas the vessels of American citizens or neutral vessels of American citizens or neutral vessels carrying American goods, to detain them when there is sufficient evidence to justify belief that contraband articles are in their cargoes, but His Majesty's Government, judging by their own experience in the past, must realise that this Government cannot without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for contraband, or upon presumptions created by special municipal enactment which are clearly at variance with international law and practice.

„This Government belives and earnestly hopes His Majesty's Government will come to the same belief, that a course of conduct more in conformity with the rules of international usage, which Great Britain has strongly sanctioned for many years, will in the end better serve the interests of belligerents as well as those of neutrals.

„Not only is the situation a pitiful one to the commercial interests of the United States but many of the great industries of this country are suffering because their products are denied long-established markets in European countries which, though neutral, are contiguous to the nations at war. The producers and exporters steamship and insurance companies are pressing, and not without reason, for relief from the menace to trans-Atlantic trade which is gradually but surely destroying their business and threatening them with financial disaster.

„The Government of the United States, still relying upon the deep sense of justice of the British nation, which has been so often manifested in the intercourse between the two countries during so many years of uninterrupted friendship, expresses confidently the hope that His Majesty's Government will realise the obstacles and difficulties which their present policy has placed in the way of commerce between the United States and the neutral countries of Europe, and will instruct its officials to refrain from all unnecessary interference with freedom of trade between nations which are sufferers though not participants in the present conflict, and will in their treatment of neutral ships and cargoes conform more closely to those rules governing the maritime relations between belligerents and neutrals, which have received the sanction of the civilised world and which Great Britain has in other wars so strongly and successfully advocated.

„In conclusion, it should be impressed upon His Majesty's Government that the present condition of American trade with the neutral European countries is such that if it does not improve it may arouse a feeling contrary to that which has so long existed between the American and British peoples. Already it is becoming more and more the subject of public criticism and complaint. There is an increasing belief, doubtless not entirely unjustified, that the present British policy towards American trade is responsible for the depression in certain industries which depend upon European markets. The attention of the British Government is called to this possible result of

their present policy to show how widespread is the effect upon the industrial life of the United States, and to emphasize the importance of removing the cause of complaint."

I have, etc. *Walter Hines Page.*

Nr. 1910. Vorläufige englische Antwort vom 7. Januar 1915 auf die amerikanische Note vom 28. Dezember 1914.

(**Misc. 6 [1915]**, S. 3—6.)

Sir *Edward Grey* to Mr. *Page.*

Foreign Office, January 7, 1915.

Your Excellency,

I have the honour to acknowledge the receipt of your note of the 28th December.

It is being carefully examined and the points raised in it are receiving consideration, as the result of wich a reply shall be addressed to your Excellency, dealing in detail with the issues raised and the points to which the United States Government have drawn attention. This consideration and the preparation of the reply will necessarily require some time, and I therefore desire to send without further delay some preliminary observations which will, I trust, help to clear the ground and remove some misconceptions that seem to exist.

Let me say at once that we entirely recognise the most friendly spirit referred to by your Excellency, and that we desire to reply in the same spirit and in the belief that, as your Excellency states, frankness will best serve the continuance of cordial relations between the two countries.

His Majesty's Government cordially concur in the principle enunciated by the Government of the United States, that a belligerent, in dealing with trade between neutrals, should not interfere unless such interference is necessary to protect the belligerent's national safety, and then only to the extent to which this is necessary. We shall endeavour to keep our action within the limits of this principle, on the understanding that it admits our right to interfere when such interference is, not with bona fide trade between the United States and another neutral country, but with trade in contraband destined for the enemy's country, and we are ready, whenever our action may unintentionally exceed this principle, to make redress.

We think that much misconception exists as to the extent to which we have, in practice, interfered with trade. Your Excellency's note seems to hold His Majesty's Government responsible for the present condition of trade with neutral countries, and it is stated that, through the action of His Majesty's Government, the products of the great industries of the United States have been denied long-established markets in European countries which, though neutral, are contiguous to the seat of war. Such a result is far from being the intention of His Majesty's Government, and they would exceedingly regret that it should be due to their action. I have been unable to obtain complete or conclusive figures showing what the state of trade with these neutral countries has been recently, and I can therefore only ask that some further consideration should be given to the question whether United States trade with these neutral countries has been so seriously affected. The only figures as to the total volume of trade that I have seen are those for the exports from New York for the month of November 1914, and they are as follows, compared with the month of November 1913:

	November 1913	November 1914
	Dollars	Dollars
Exports from New York for —		
Denmark	558 000	7 101 000
Sweden	377 000	2 858 000
Norway	477 000	2 318 000
Italy	2 971 000	4 781 000
Holland	4 389 000	3 960 000

It is true that there may have been a falling off in cotton exports, as to which New York figures would be no guide, but His Majesty's Government have been most careful not to interfere with cotton, and its place on the free list has been scrupulously maintained.

We do not wish to lay too much stress upon incomplete statistics; the figures above are not put forward as conclusive, and we are prepared to examine any further evidence with regard to the state of trade with these neutral countries, which may point to a different conclusion or show that it is the action of His Majesty's Government in particular, and not the existence of a state of war and consequent diminution of purchasing power and shrinkage of trade, which is responsible for adverse effects upon trade with neutral countries.

That the existence of a state of war on such a scale has had a very adverse effect upon certain great industries, such as cotton, is obvious, but it is submitted that this is due to the general cause of diminished purchasing power of such countries as France, Germany, and the United Kingdom, rather than to interference with trade with neutral countries. In the matter of cotton, it may be recalled that the British Government gave special assistance through the Liverpool Cotton Exchange to the renewal of transactions in the cotton trade of not only the United Kingdom but of many neutral countries.

Your Excellency's note refers in particular to the detention of copper. The figures taken from official returns for the export of copper from the United States for Italy for the months during which the war has been in progress up to the end of the first three weeks of December are as follows:

1913: 15 202 000 lbs. 1914: 36 285 000 lbs.

Norway, Sweden, Denmark, and Switzerland are not shown separately for the whole period in the United States returns, but are included in the heading „Other Europe“ (that is, Europe other than the United Kingdom, Russia, France, Belgium, Austria, Germany, Holland, and Italy). The corresponding figures under this heading are as follows:

1913: 7 271 000 lbs. 1914: 35 347 000 lbs.

With such figures the presumption is very strong that the bulk of the copper consigned to these countries has recently been intended, not for their own use, but for that of a belligerent who cannot import it direct. It is therefore an imperative necessity for the safety of this country while it is at war that His Majesty's Government should do all in their power to stop such part of this import of copper as is not genuinely destined for neutral countries.

Your Excellency does not quote any particular shipment of copper to Sweden which has been detained. There are, however, four consignments to Sweden at the present time of copper and aluminum which, though definitely consigned to Sweden, are, according to positive evidence in the possession of His Majesty's Government, definitely destined for Germany.

I cannot believe that, with such figures before them, and in such cases as those just mentioned, the Government of the United States would question the propriety of the action of His Majesty's Government in taking suspected cargoes to a Prize Court, and we are convinced that it cannot be in accord with the wish either of the Government or of the people of the United States to strain the international code in favour of private interests so as to prevent Great Britain from taking such legitimate means for this purpose as are in her power.

With regard to the seizure of foodstuffs to which your Excellency refers, His Majesty's Government are prepared to admit that foodstuffs should not be detained and put into a Prize Court without presumption that they are intended for the armed forces of the enemy or the enemy Government. We believe that this rule has been adhered to in practice hitherto; but, if the United States Government have instances to the contrary, we are prepared to examine them, and it is our present intention to adhere to the rule, though we cannot give an unlimited and unconditional undertaking in view of the departure by those against whom we are fighting from hitherto accepted rules of civilisation and humanity, and the uncertainty as to the extent to which such rules may be violated by them in future.

From the 4th August last to the 3rd January the number of steamships proceeding from the United States for Holland, Denmark, Norway, Sweden, and Italy has been 773. Of these there are forty-five which have had consignments or cargoes placed in the Prize Court, while of the ships themselves only eight have been placed in the Prize Court, and one of these has since been released. It is, however, essential under modern conditions that, where there is real ground for suspecting the presence of contraband, the vessels should be brought into port for examination; in no other way can the right of search be exercised, and but for this practice it would have to be completely abandoned. Information was received by us that special instructions had been given to ship rubber from the United States under another designation to escape notice, and such cases have occurred in several instances. Only by search in a port can such cases, when suspected, be discovered and proved. The necessity for examination in a port may also be illustrated by a hypothetical instance, connected with cotton, which has not yet occurred. Cotton is not specifically mentioned in your Excellency's note, but I have seen public statements made in the United States that the attitude of His Majesty's Government with regard to cotton has been ambiguous, and thereby responsible for depression in the cotton trade. There has never been any foundation for this allegation. His Majesty's Government have never put cotton on the list of contraband; they have throughout the war kept it on the free list; and, on every occasion when questioned on the point, they have stated their intention of adhering to this practice. But information has reached us that, precisely because we have declared our intention of not interfering with cotton, ships carrying cotton will be specially selected to carry concealed contraband; and we have been warned that copper will be concealed in bales of cotton. Whatever suspicions we have entertained we have not so far made these a ground for detaining any ship carrying cotton; but, should we have information giving us real reason to believe in the case of a particular ship that the bales of cotton concealed copper or other contraband, the only way to prove our case would be to examine and weigh the bales; a process that could be carried out only by bringing the vessel into a port. In such a case, or in any other, if examination justified the action of His Majesty's Government, the case shall be brought before a Prize Court and dealt with in the ordinary way.

That the decisions of British Prize Courts hitherto have not been unfavourable to neutrals is evidenced by the decision in the „Miramichi“ case. This case, which was decided against the Crown, laid down that the American shipper was to be paid, even when he had sold a cargo c. i. f., and when the risk of loss after the cargo had been shipped did not apply to him at all.

It has further been represented to His Majesty's Government, though this subject is not dealt with in your Excellency's note, that our embargoes on the export of some articles, more especially rubber, have interfered with commercial interests in the United States. It is, of course, difficult for His Majesty's Government to permit the export of rubber from British dominions to the United States at a time when rubber is essential to belligerent countries for carrying on the war, and when a new trade in exporting rubber from the United States in suspiciously large quantities to neutral countries has actually sprung up since the war. It would be impossible to permit the export of rubber from Great Britain unless the right of His Majesty's Government were admitted to submit to a Prize Court cargoes of rubber exported from the United States, which they believed to be destined for an enemy country, and reasonable latitude of action for this purpose were conceded. But His Majesty's Government have now provisionally come to an arrangement with the rubber exporters in Great Britain which will permit of licences being given under proper guarantees for the export of rubber to the United States.

We are confronted with the growing danger that neutral countries contiguous to the enemy will become, on a scale hitherto unprecedented, a base of supplies for the armed forces of our enemies and for materials for manufacturing armament. The trade figures of imports show how strong this tendency is, but we have no complaint to make of the attitude of the Governments of those countries, which, so far as we are aware, have not departed from proper rules of neutrality. We endeavour, in the interest of our own national safety, to prevent this danger by intercepting goods really destined for the enemy, without interfering with those which are bona fide neutral.

Since the outbreak of the war the Government of the United States have changed their previous practice, and have prohibited the publication of manifests till thirty days after the departure of vessels from the United States ports. We had no locus standi for complaining of this change, and did not complain. But the effect of it must be to increase the difficulty of ascertaining the presence of contraband, and to render necessary, in the interest of our national safety, the examination and detention of more ships than would have been the case if the former practice had continued.

Pending a more detailed reply, I would conclude by saying that His Majesty's Government do not desire to contest the general principles of international law on which they understand the note of the United States to be based, and desire to restrict their action solely to interference with contraband destined for the enemy.

His Majesty's Government are prepared, whenever a cargo coming from the United States is detained, to explain the case on which such detention has taken place, and would gladly enter into any arrangement by which mistakes can be avoided and reparation secured promptly when any injury to the neutral owners of a ship or cargo has been improperly caused, for they are most desirous, in the interest both of the United States and of other neutral countries, that British action should not interfere with the normal importation and use by the neutral countries of goods from the United States.

I have, etc. *E. Grey.*

Nr. 1911. Brief des Senators Stone vom 8. Januar 1915 an den Staatssekretär Bryan.

(E. W. 2, S. 57.)

Chairman of the Senate Committee on Foreign Affairs to the Secretary of State.

Washington, January 8, 1915.

Dear Mr. Secretary: As you are aware, frequent complaints or charges are made in one form or another through the press that this Government has shown partiality to Great Britain, France, and Russia as against Germany and Austria during the present war between those powers; in addition to which I have received numerous letters to the same effect from sympathizers with Germany and Austria. The various grounds of these complaints may be summarized and stated in the following form:

1. Freedom of communication by submarine cables, but censorship of wireless messages.

2. Submission to censorship of mails and in some cases to the repeated destruction of American letters found on neutral vessels.

3. The search of American vessels for German and Austrian subjects —
   a) On the high seas.
   b) In territorial waters of a belligerent.

4. Submission without protest to English violations of the rules regarding absolute and conditional contraband, as laid down —
   a) In the Hague Conventions.
   b) In international law.
   c) In the Declaration of London.

5. Submission without protest to inclusion of copper in the list of absolute contraband.

6. Submission without protest to interference with American trade to neutral countries —
   a) In conditional contraband.
   b) In absolute contraband.

7. Submission without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off all supplies from Germany and Austria.

8. Submission to British interruption of trade in petroleum, rubber, leather, wool, etc.

9. No interference with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the war.

10. No suppression of sale of dumdum bullets to Great Britain.

11. British warships are permitted to lie off American ports and intercept neutral vessels.

12. Submission without protest to disregard by Great Britain and her allies of —
   a) American naturalization certificates.
   b) American passports.

13. Change of policy in regard to loans to belligerents:
   a) General loans.
   b) Credit loans.

14. Submission to arrest of native-born Americans on neutral vessels and in British ports, and their imprisonment.

15. Indifference to confinement of noncombatants in detention camps in England and France.

16. Failure to prevent transshipment of British troops and war material across the territory of the United States.

17. Treatment and final internment of German steamship Geier and the collier Locksun at Honolulu.

18. Unfairness to Germany in rules relative to coaling of warships in Panama Canal Zone.

19. Failure to protest against the modifications of the declaration of London by the British Government.

20. General unfriendly attitude of Government toward Germany and Austria.

If you deem it not incompatible with the public interest I would be obliged if you would furnish me with whatever information your department may have. touching these various points of complaint, or request the counselor of the State Department to send me the information, with any suggestions you or he may deem advisable to make with respect to either the legal or political aspects of the subject. So far as informed I see no reason why all the matter I am requesting to be furnished should not be made public, to the end that the true situation may be known and misapprehensions quieted.

I have, etc., *Wm. J. Stone.*

Nr. 1912. Schreiben des Staatsdepartements in Washington vom 20. Januar 1915 an Senator Stone mit der Zurückweisung der gegen die amerikanische Regierung erhobenen Vorwürfe parteiischer Stellungnahme zum Nachteil der Mittelmächte.

(**E. W. 2,** S. 58—63.)

The Secretary of State to the Chairman of the Senate Committee on Foreign Relations.

Department of State, Washington, January 20, 1915.

Dear Mr. *Stone:* I have received your letter of the 8th instant, referring to frequent complaints or charges made in one form or another through the press that this Government has shown partiality to Great Britain, France, and Russia against Germany and Austria during the present war, and stating that you have received numerous letters to the same effect from sympathizers with the latter powers. You summarize the various grounds of these complaints and ask that you be furnished with whatever information the department may have touching these points of complaint, in order that you may be informed as to what the true situation is in regard to these matters.

In order that you may have such information as the department has on the subjects referred to in your letter, I will take them up seriatim.

1. Freedom of communication by submarine cables versus censored communication by wireless.

The reason that wireless messages and cable messages require different treatment by a neutral Government is as follows:

Communications by wireless can not be interrupted by a belligerent. With a submarine cable it is otherwise. The possibility of cutting the cable exists, and if a belligerent possesses naval superiority the cable is cut, as

was the German cable near the Azores by one of Germany's enemies and as was the British cable near Fanning Island by a German naval force. Since a cable is subject to hostile attack, the responsibility falls upon the belligerent and not upon the neutral to prevent cable communication.

A more important reason, however, at least from the point of view of a neutral Government, is that messages sent out from a wireless station in neutral territory may be received by belligerent warships on the high seas. If these messages, whether plain or in cipher, direct the movements of warships or convey to them information as to the location of an enemy's public or private vessels, the neutral territory becomes a base of naval operations, to permit which would be essentially unneutral.

As a wireless message can be received by all stations and vessels within a given radius, every message in cipher, whatever its intended destination, must be censored; otherwise military information may be sent to warships off the coast of a neutral. It is manifest that a submarine cable is incapable of becoming a means of direct communication with a warship on the high seas. Hence its use can not, as a rule, make neutral territory a base for the direction of naval operations.

2. Censorship of mails and in some cases repeated destruction of American letters on neutral vessels.

As to the censorship of mails, Germany as well as Great Britain has pursued this course in regard to private letters falling into their hands. The unquestioned right to adopt a measure of this sort makes objection to it inadvisable.

It has been asserted that American mail on board of Dutch steamers has been repeatedly destroyed. No evidence to this effect has been filed with the Government, and therefore no representations have been made. Until such a case is presented in concrete form, this Government would not be justified in presenting the matter to the offending belligerent. Complaints have come to the department that mail on board neutral steamers has been opened and detained, but there seem to be but few cases where the mail from neutral countries has not been finally delivered. When mail is sent to belligerent countries open and is of a neutral and private character it has not been molested, so far as the department is advised.

3. Searching of American vessels for German and Austrian subjects on the high seas and in territorial waters of a belligerent.

So far as this Government has been informed, no American vessels on the high seas, with two exceptions, have been detained or searched by belligerent warships for German and Austrian subjects. One of the exceptions to which reference is made is now the subject of a rigid investigation, and vigorous representations have been made to the offending Government. The other exception, where certain German passengers were made to sign a promise not to take part in the war, has been brought to the attention of the offending Government with a declaration that such procedure, if true, is an unwarranted exercise of jurisdiction over American vessels in which this Government will not acquiesce.

An American private vessel entering voluntarily the territorial waters of a belligerent becomes subject to its municipal laws, as do the persons on board the vessel.

There have appeared in certain publications the assertion that failure to protest in these cases is an abandonment of the principle for which the United States went to war in 1812. If the failure to protest were true,

which it is not, the principle involved is entirely different from the one appealed to against unjustifiable impressment of Americans in the British Navy in time of peace.

4. Submission without protest to British violations of the rules regarding absolute and conditional contraband as laid down in The Hague conventions, the declaration of London, and international law.

There is no Hague convention which deals with absolute or conditional contraband, and, as the declaration of London is not in force. the rules of international law only apply. As to the articles to be regarded as contraband, there is no general agreement between nations. It is the practice for a country, either in time of peace or after the outbreak of war, to declare the articles which it will consider as absolute or conditional contraband. It is true that a neutral Government is seriously affected by this declaration, as the rights of its subjects or citizens may be impaired. But the rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade and there is no tribunal to which questions of difference may be readily submitted.

The record of the United States in the past is not free from criticism. When neutral this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case.

The United States has made earnest representations to Great Britain in regard to the seizure and detention by the British authorities of all American ships or cargoes bona fide destined to neutral ports on the ground that such seizures and detentions were contrary to the existing rules of international law. It will be recalled, however, that American courts have established various rules bearing on these matters. The rule of „continuous voyage“ has been not only asserted by American tribunals but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port „to order“, from which, as a matter of fact, cargoes had been transshipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government therefore can not consistently protest against the application of rules which it has followed in the past, unless they have not been practiced as heretofore.

5. Acquiescence without protest to the inclusion of copper and other articles in the British lists of absolute contraband.

The United States has now under consideration the question of the right of a belligerent to include „copper unwrought“ in its list of absolute contraband instead of in its list of conditional contraband. As the Government of the United States has in the past placed „all articles from which ammunition is manufactured“ in its contraband list, and has declared copper to be among such materials, it necessarily finds some embarrassment in dealing with the subject.

Moreover, there is no instance of the United States acquiescing in Great Britain's seizure of copper shipments. In every case in which it has been done vigorous representations have been made to the British Government, and the representatives of the United States have pressed for the release of the shipments.

6. Submission without protest to interference with American trade to neutral countries in conditional and absolute contraband.

The fact that the commerce of the United States is interrupted by Great Britain is consequent upon the superiority of her navy on the high seas. History shows that whenever a country has possessed that superiority our trade has been interrupted and that few articles essential to the prosecution of the war have been allowed to reach its enemy from this country. The department's recent note to the British Government, which has been made public, in regard to detentions and seizures of American vessels and cargoes, is a complete answer to this complaint.

Certain other complaints appear aimed at the loss of profit in trade, which must include at least in part trade in contraband with Germany; while other complaints demand the prohibition of trade in contraband, which appear to refer to trade with the allies.

7. Submission without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off supplies from Germany and Austria.

As no American vessel so far as known has attempted to carry conditional contraband to Germany or Austria-Hungary, no ground of complaint has arisen out of the seizure or condemnation by Great Britain of an American vessel with a belligerent destination. Until a case arises and the Government has taken action upon it, criticism is premature and unwarranted. The United States in its note of December 28 to the British Government strongly contended for the principle of freedom of trade in articles of conditional contraband not destined to the belligerent's forces.

8. Submission to British interference with trade in petroleum, rubber, leather, wool, etc.

Petrol and other petroleum products have been proclaimed by Great Britain as contraband of war. In view of the absolute necessity of such products to the use of submarines, aeroplanes, and motors, the United States Government has not yet reached the conclusion that they are improperly included in a list of contraband. Military operations to-day are largely a question of motive power through mechanical devices. It is therefore difficult to argue successfully against the inclusion of petroleum among the articles of contraband. As to the detention of cargoes of petroleum going to neutral countries, this Government has thus far successfully obtained the release in every case of detention or seizure which has been brought to its attention.

Great Britain and France have placed rubber on the absolute contraband list and leather on the conditional contraband list. Rubber is extensively used in the manufacture and operation of motors and, like petrol, is regarded by some authorities as essential to motive power to-day. Leather is even more widely used in cavalry and infantry equipment. It is understood that both rubber and leather, together with wool, have been embargoed by most of the belligerent countries. It will be recalled that the United States has in the past exercised the right of embargo upon exports of any commodity which might aid the enemy's cause.

9. The United States has not interfered with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the conflict.

There is no power in the Executive to prevent the sale of ammunition to the belligerents.

The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or by municipal statute. It has never

been the policy of this Government to prevent the shipment of arms or ammunition into belligerent territory, except in the case of neighboring American Republics, and then only when civil strife prevailed. Even to this extent the belligerents in the present conflict, when they were neutrals, have never, so far as the records disclose, limited the sale of munitions of war. It is only necessary to point to the enormous quantities of arms and ammunition furnished by manufacturers in Germany to the belligerents in the Russo-Japanese war and in the recent Balkan wars to establish the general recognition of the propriety of the trade by a neutral nation.

It may be added that on the 15th of December last the German ambassador, by direction of his Government, presented a copy of a memorandum of the Imperial German Government which, among other things, set forth the attitude of that Government toward traffic in contraband of war by citizens of neutral countries. The Imperial Government stated that „under the general principles of international law, no exception can be taken to neutral States letting war material go to Germany's enemies from or through neutral territory“, and that the adversaries of Germany in the present war are, in the opinion of the Imperial Government, authorized to „draw on the United States contraband of war and especially arms worth billions of marks“. These principles, as the ambassador stated, have been accepted by the United States Government in the statement issued by the Department of State on October 15 last, entitled „Neutrality and trade in contraband“. Acting in conformity with the propositions there set forth, the United States has itself taken no part in contraband traffic, and has, so far as possible, lent its influence toward equal treatment for all belligerents in the matter of purchasing arms and ammunition of private persons in the United States.

10. The United States has not suppressed the sale of dumdum bullets to Great Britain.

On December 5 last the German ambassador addressed a note to the department, stating that the British Government had ordered from the Winchester Repeating Arms Co. 20 000 „riot guns“, model 1897, and 50 000 000 „buckshot cartridges“ for use in such guns. The department replied that it saw a published statement of the Winchester Co., the correctness of which the company has confirmed to the department by telegraph. In this statement the company categorically denises that it has received an order for such guns and cartridges from or made any sales of such material to the British Government, or to any other Government engaged in the present war. The ambassador further called attention to „information, the accuracy of which is not to be doubted“, that 8 000 000 cartridges fitted with „mushroom bullets“ had been delivered since October of this year by the Union Metallic Cartridge Co. for the armament of the English army. In reply the department referred to the letter of December 10, 1914, of the Remington Arms-Union Metallic Cartridge Co., of New York, to the ambassador, called forth by certain newspaper reports of statements alleged to have been made by the ambassador in regard to the sales by that company of soft-nosed bullets.

From this letter, a copy of which was sent to the department by the company, it appears that instead of 8 000 000 cartridges having been sold, only a little over 117 000 were manufactured and 109 000 were sold. The letter further asserts that these cartridges were made to supply a demand for a better sporting cartridge with a soft-nosed bullet than had been manufactured theretofore, and that such cartridges can not be used in the military rifles of any foreign powers. The company adds that its statements can be substantiated and that it is ready to give the ambassador any

evidence that he may require on these points. The department further stated that it was also in receipt from the company of a complete detailed list of the persons to whom these cartridges were sold, and that from this list it appeared that the cartridges were sold to firms in lots of 20 to 2000 and one lot each of 3000, 4000, and 5000. Of these only 960 cartridges went to British North America and 100 to British East Africa.

The department added that, if the ambassador could furnish evidence that this or any other company is manufacturing and selling for the use of the contending armies in Europe cartridges whose use would contravene The Hague conventions, the department would be glad to be furnished with this evidence, and that the President would, in case any American company is shown to be engaged in this traffic, use his influence to prevent, so far as possible, sales of such ammunition to the powers engaged in the European war, without regard to whether it is the duty of this Government, upon legal or conventional grounds, to take such action.

The substance of both the ambassador's note and the department's reply have appeared in the press.

The department has received no other complaints of alleged sales of dumdum bullets by American citizens to belligerent Governments.

11. British warships are permitted to lie off American ports and intercept neutral vessels.

The complaint is unjustified from the fact that representations were made to the British Government that the presence of war vessels in the vicinity of New York Harbor was offensive to this Government and a similar complaint was made to the Japanese Government as to one of its cruisers in the vicinity of the port of Honolulu. In both cases the warships were withdrawn.

It will be recalled that in 1863 the department took the position that captures made by its vessels after hovering about neutral ports would not be regarded as valid. In the Franco-Prussian War President Grant issued a proclamation warning belligerent warships against hovering in the vicinity of American ports for purposes of observation or hostile acts. The same policy has been maintained in the present war, and in all of the recent proclamations of neutrality the President states that such practice by belligerent warships is „unfriendly and offensive“.

12. Great Britain and her allies are allowed without protest to disregard American citizenship papers and passports.

American citizenship papers have been disregarded in a comparatively few instances by Great Britain, but the same is true of all the belligerents. Bearers of American passports have been arrested in all the countries at war. In every case of apparent illegal arrest the United States Government has entered vigorous protests with request for release. The department does not know of any cases, except one or two, which are still under investigation, in which naturalized Germans have not been released upon representations by this Government. There have, however, come to the department's notice authentic cases in which American passports have been fraudulently obtained and used by certain German subjects.

The Department of Justice has recently apprehended at least four persons of German nationality who, it is alleged, obtained American passports under pretense of being American citizens and for the purpose of returning to Germany without molestation by her enemies during the voyage. There are indications that a systematic plan had been devised to obtain American passports through fraud for the purpose of securing safe passage for German

officers and reservists desiring to return to Germany. Such fraudulent use of passports by Germans themselves can have no other effect than to cast suspicion upon American passports in general. New regulations, however, requiring among other things the attaching of a photograph of the bearer to his passport, under the seal of the Department of State, and the vigilance of the Department of Justice, will doubtless prevent any further misuse of American passports.

13. Change of policy in regard to loans to belligerents.

War loans in this country were disapproved because inconsistent with the spirit of neutrality. There is a clearly defined difference between a war loan and the purchase of arms and ammunition. The policy of disapproving of war loans affects all governments alike, so that disapproval is not an unneutral act. The case is entirely different in the matter of arms and ammunition, because prohibition of export not only might not, but in this case would not, operate equally upon the nations at war. Then, too, the reason given for the disapproval of war loans is supported by other considerations which are absent in the case presented by the sale of arms and ammunition. The taking of money out of the United States during such a war as this might seriously embarrass the Government in case it needed to borrow money and it might also seriously impair this Nation's ability to assist the neutral nations which, though not participants in the war, are compelled to bear a heavy burden on account of the war, and, again, a war loan, if offered for popular subscription in the United States, would be taken up chiefly by those who are in sympathy with the belligerent seeking the loan. The result would be that great numbers of the American people might become more earnest partisans, having material interest in the success of the belligerent, whose bonds they hold. These purchases would not be confined to a few, but would spread generally throughout the country, so that the people would be divided into groups of partisans, which would result in intense bitterness and might cause an undesirable, if not a serious, situation. On the other hand, contracts for and sales of contraband are mere matters of trade. The manufacturer, unless peculiarly sentimental, would sell to one belligerent as readily as he would to another. No general spirit of partisanship is aroused—no sympathies excited. The whole transaction is merely a matter of business.

This Government has not been advised that any general loans have been made by foreign governments in this country since the President expressed his wish that loans of this character should not be made.

14. Submission to arrest of native-born Americans on neutral vessels and in British ports and their imprisonment.

The general charge as to the arrest of American-born citizens on board neutral vessels and in British ports, the ignoring of their passports, and their confinement in jails requires evidence to support it. That there have been cases of injustice of this sort is unquestionably true, but Americans in Germany have suffered in this way as Americans have in Great Britain. This Government has considered that the majority of these cases resulted from overzealousness on the part of subordinate officials in both countries. Every case which has been brought to the attention of the Department of State has been promptly investigated and, if the facts warranted, a demand for release has been made.

15. Indifference to confinement of noncombatants in detention camps in England and France.

As to the detention of noncombatants confined in concentration camps, all the belligerents, with perhaps the exception of Servia and Russia, have

made similar complaints and those for whom this Government is acting have asked investigations, which representatives of this Government have made impartially. Their reports have shown that the treatment of prisoners is generally as good as possible under the conditions in all countries, and that there is no more reason to say that they are mistreated in one country than in another country or that this Government has manifested an indifference in the matter. As this department's efforts at investigations seemed to develop bitterness between the countries, the department on November 20 sent a circular instruction to its representatives not to undertake further investigation of concentration camps.

But at the special request of the German Government that Mr. *Jackson*, former American minister at Bucharest, now attached to the American Embassy at Berlin, make an investigation of the prison camps in England, in addition to the investigations already made, the department has consented to dispatch Mr. *Jackson* on this special mission.

16. Failure to prevent transshipment of British troops and war material across the territory of the United States.

The department has had no specific case of the passage of convoys of troops across American territory brought to its notice. There have been rumors to this effect, but no actual facts have been presented. The transshipment of reservists of all belligerents who have requested the privilege has been permitted on condition that they travel as individuals and not as organized, uniformed, or armed bodies. The German Embassy has advised the department that it would not be likely to avail itself of the privilege, but Germany's ally, Austria-Hungary, did so.

Only one case raising the question of the transit of war material owned by a belligerent across United States territory has come to the department's notice. This was a request on the part of the Canadian Government for permission to ship equipment across Alaska to the sea. The request was refused.

17. Treatment and final internment of German steamship „Geier“ and the collier „Locksun“ at Honolulu.

The Geier entered Honolulu on October 15 in an unseaworthy condition. The commanding officer reported the necessity of extensive repairs which would require an indefinite period for completion. The vessel was allowed the generous period of three weeks to November 7 to make repairs and leave the port, or, failing to do so, to be interned. Alonger period would have been contrary to international practice, which does not permit a vessel to remain for a long time in a neutral port for the purpose of repairing a generally run-down condition due to long sea service. Soon after the German cruiser arrived at Honolulu a Japanese cruiser appeared off the port and the commander of the Geier chose to intern the vessel rather than to depart from the harbor.

Shortly after the Geier entered the port of Honolulu the steamer Locksun arrived. It was found that this vessel had delivered coal to the Geier en route and had accompanied her toward Hawaii. As she had thus constituted herself a tender or collier to the Geier she was accorded the same treatment and interned on November 7.

18. Unfairness to Germany in rules relative to coaling of warships in Panama Canal Zone.

By proclamation of November 13, 1914, certain special restrictions were placed on the coaling of warships or their tenders or colliers in the Canal Zone. These regulations were framed through the collaboration of the State, Navy, and War Departments and without the slightest reference to favoritism

to the belligerents. Before these regulations were proclaimed, war vessels could procure coal of the Panama Railway in the zone ports, but no belligerent vessels are known to have done so. Under the proclamation fuel may be taken on by belligerent warships only with the consent of the canal authorities and in such amounts as will enable them to reach the nearest accessible neutral port; and the amount so taken on shall be deducted from the amount procurable in United States ports within three months thereafter. Now, it is charged the United States has shown partiality because Great Britain and not Germany happens to have colonies in the near vicinity where British ships may coal, while Germany has no such coaling facilities. Thus, it is intimated the United States should balance the inequalities of geographical position by refusing to allow any warships of belligerents to coal in the canal until the war is over. As no German warship has sought to obtain coal in the Canal Zone the charge of discrimination rests upon a possibility which during several months of warfare has failed to materialize.

19. Failure to protest against the modifications of the Declaration of London by the British Government.

The German Foreign Office presented to the diplomats in Berlin a memorandum dated October 10, calling attention to violations of and changes in the Declaration of London by the British Government and inquiring as to the attitude of the United States toward such action on the part of the allies. The substance of the memorandum was forthwith telegraphed to the department on October 22 and was replied to shortly thereafter to the effect that the United States had withdrawn its suggestion, made early in the war, that for the sake of uniformity the Declaration of London should be adopted as a temporary code of naval warfare during the present war, owing to the unwillingness of the belligerents to accept the declaration without changes and modifications, and that thenceforth the United States would insist that the rights of the United States and its citizens in the war should be governed by the existing rules of international law.

As this Government is not now interested in the adoption of the Declaration of London by the belligerents, the modifications by the belligerents in that code of naval warfare are of no concern to it except as they adversely affect the rights of the United States and those of its citizens as defined by international law. In so far as those rights have been infringed the department has made every effort to obtain redress for the losses sustained.

20. General unfriendly attitude of Government toward Germany and Austria.

If any American citizens, partisans of Germany and Austria-Hungary, feel that this administration is acting in a way injurious to the cause of those countries, this feeling results from the fact that on the high seas the German and Austro-Hungarian naval power is thus far inferior to the British. It is the business of a belligerent operating on the high seas, not the duty of a neutral, to prevent contraband from reaching an enemy. Those in this country who sympathize with Germany and Austria-Hungary appear to assume that some obligation rests upon this Government in the performance of its neutral duty to prevent all trade in contraband. and thus to equalize the difference due to the relative naval strength of the belligerents. No such obligation exists; it would be an unneutral act, an act of partiality on the part of this Government to adopt such a policy if the Executive had the power to do so. If Germany and Austria-Hungary can not import contraband from this country, it is not, because of that fact, the duty of the United States to close its markets to the allies. The markets of this country are open upon equal terms to all the world, to every nation, belligerent or neutral.

The foregoing categorical replies to specific complaints is sufficient answer to the charge of unfriendliness to Germany and Austria-Hungary.

I am, etc.,

W. J. Bryan.

Hon. *William J. Stone,*
Chairman Committee on Foreign Relations,
United States Senate, Washington, D. C.

Nr. 1913. Deutsche Bekanntmachung und Denkschrift vom 4. Februar 1915 über die Kriegszone im englischen Kanal usw. („Deutscher Reichsanzeiger und Königlich Preußischer Staatsanzeiger", Nr. 29 vom 4. Februar, abends, 1915.)

Bekanntmachung.

1. Die Gewässer rings um Großbritannien und Irland einschließlich des gesamten englischen Kanals werden hiermit als Kriegsgebiet erklärt. Vom 18. Februar 1915 an wird jedes in diesem Kriegsgebiet angetroffene feindliche Kauffahrteischiff zerstört werden, ohne daß es immer möglich sein wird, die dabei der Besatzung und den Passagieren drohenden Gefahren abzuwenden.

2. Auch neutrale Schiffe laufen im Kriegsgebiet Gefahr, da es angesichts des von der britischen Regierung am 31. Januar angeordneten Mißbrauchs neutraler Flaggen und der Zufälligkeiten des Seekrieges nicht immer vermieden werden kann, daß die auf feindliche Schiffe berechneten Angriffe auch neutrale Schiffe treffen.

3. Die Schiffahrt nördlich um die Shetlandsinseln in dem östlichen Gebiet der Nordsee und in einem Streifen von mindestens 30 Seemeilen Breite entlang der niederländischen Küste ist nicht gefährdet.

Berlin, den 4. Februar 1915.

Der Chef des Admiralstabes der Marine.
von Pohl.

Zur Erläuterung der Bekanntmachung vom 4. Februar 1915 wurde den verbündeten, den neutralen und den feindlichen Mächten die nachstehende Denkschrift mitgeteilt:

Denkschrift der Kaiserlich deutschen Regierung über Gegenmaßnahmen gegen die völkerrechtswidrigen Maßnahmen Englands zur Unterbindung des neutralen Seehandels mit Deutschland.

Seit Beginn des gegenwärtigen Krieges führt Großbritannien gegen Deutschland den Handelskrieg in einer Weise, die allen völkerrechtlichen Grundsätzen Hohn spricht. Wohl hat die britische Regierung in mehreren Verordnungen die Londoner Seekriegsrechtserklärung als für ihre Seestreitkräfte maßgebend bezeichnet; in Wirklichkeit hat sie sich aber von dieser Erklärung in den wesentlichsten Punkten losgesagt, obwohl ihre eigenen Bevollmächtigten auf der Londoner Seekriegsrechtskonferenz deren Beschlüsse als geltendes Völkerrecht anerkannt hatten. Die britische Regierung hat eine Reihe von Gegenständen auf die Liste der Konterbande gesetzt, die nicht oder doch nur sehr mittelbar für kriegerische Zwecke verwendbar sind und daher nach der Londoner Erklärung wie nach allgemein anerkannten Regeln des Völkerrechts überhaupt nicht als Konterbande bezeichnet werden dürfen. Sie hat ferner den Unterschied zwischen absoluter und relativer Konterbande

tatsächlich beseitigt, indem sie alle für Deutschland bestimmten Gegenstände relativer Konterbande ohne Rücksicht auf den Hafen, in dem sie ausgeladen werden sollen, und ohne Rücksicht auf ihre feindliche oder friedliche Verwendung der Wegnahme unterwirft. Sie scheut sich sogar nicht, die Pariser Seerechtsdeklaration zu verletzen, da ihre Seestreitkräfte von neutralen Schiffen deutsches Eigentum, das nicht Konterbande war, weggenommen haben. Ueber ihre eigenen Verordnungen zur Londoner Erklärung hinausgehend, hat sie weiter durch ihre Seestreitkräfte zahlreiche wehrfähige Deutsche von neutralen Schiffen wegführen lassen und sie zu Kriegsgefangenen gemacht. Endlich hat sie die ganze Nordsee zum Kriegsschauplatz erklärt und der neutralen Schiffahrt die Durchfahrt durch das offene Meer zwischen Schottland und Norwegen wenn nicht unmöglich gemacht, so doch aufs äußerste erschwert und gefährdet, so daß sie gewissermaßen eine Blockade neutraler Küsten und neutraler Häfen gegen alles Völkerrecht eingeführt hat. Alle diese Maßnahmen verfolgen offensichtlich den Zweck, durch die völkerrechtswidrige Lahmlegung des legitimen neutralen Handels nicht nur die Kriegführung, sondern auch die Volkswirtschaft Deutschlands zu treffen und letzten Endes auf dem Wege der Aushungerung das ganze deutsche Volk der Vernichtung preiszugeben.

Die neutralen Mächte haben sich den Maßnahmen der britischen Regierung im großen und ganzen gefügt; inbesondere haben sie es nicht erreicht, daß die von ihren Schiffen völkerrechtswidrig weggenommenen deutschen Personen und Güter von der britischen Regierung herausgegeben worden sind. Auch haben sie sich in gewisser Richtung sogar den mit der Freiheit der Meere unvereinbaren englischen Maßnahmen angeschlossen, indem sie offenbar unter dem Druck Englands die für friedliche Zwecke bestimmte Durchfuhr nach Deutschland auch ihrerseits durch Ausfuhr- und Durchfuhrverbote verhindern. Vergebens hat die deutsche Regierung die neutralen Mächte darauf aufmerksam gemacht, daß sie sich die Frage vorlegen müsse, ob sie an den von ihr bisher streng beobachteten Bestimmungen der Londoner Erklärung noch länger festhalten könne, wenn Großbritannien das von ihm eingeschlagene Verfahren fortsetzen und die neutralen Mächte alle diese Neutralitätsverletzungen zuungunsten Deutschlands länger hinnehmen würden. Großbritannien beruft sich für seine völkerrechtswidrigen Maßnahmen auf die Lebensinteressen, die für das britische Reich auf dem Spiele stehen, und die neutralen Mächte scheinen sich mit theoretischen Protesten abzufinden, also tatsächlich Lebensinteressen von Kriegführenden als hinreichende Entschuldigung für jede Art von Kriegführung gelten zu lassen.

Solche Lebensinteressen muß nunmehr auch Deutschland für sich anrufen. Es sieht sich daher zu seinem Bedauern zu militärischen Maßnahmen gegen England gezwungen, die das englische Verfahren vergelten sollen. Wie England das Gebiet zwischen Schottland und Norwegen als Kriegsschauplatz bezeichnet hat, so bezeichnet Deutschland die Gewässer rings um Großbritannien und Irland mit Einschluß des gesamten englischen Kanals als Kriegsschauplatz und wird mit allen ihm zu Gebote stehenden Kriegsmitteln der feindlichen Schiffahrt daselbst entgegentreten. Zu diesem Zwecke wird es vom 18. Februar 1915 an jedes feindliche Kauffahrteischiff, das sich auf den Kriegsschauplatz begibt, zu zerstören suchen, ohne daß es immer möglich sein wird, die dabei den Personen und Gütern drohenden Gefahren abzuwenden. Die Neutralen werden daher gewarnt, solchen Schiffen weiterhin Mannschaften, Passagiere und Waren anzuvertrauen. Sodann aber werden sie darauf aufmerksam gemacht, daß es sich auch für ihre eigenen Schiffe dringend empfiehlt, das Einlaufen in dieses Gebiet zu vermeiden. Denn wenn auch die deutschen Seestreitkräfte Anweisung haben, Gewalttätigkeiten gegen neutrale Schiffe, soweit sie als solche erkennbar sind, zu unterlassen, so kann es doch

angesichts des von der britischen Regierung angeordneten Mißbrauchs neutraler Flaggen und der Zufälligkeiten des Krieges nicht immer verhütet werden, daß auch sie einem auf feindliche Schiffe berechneten Angriff zum Opfer fallen. Dabei wird ausdrücklich bemerkt, daß die Schiffahrt nördlich um die Shetlandsinseln, in dem östlichen Gebiet der Nordsee und in einem Streifen von mindestens 30 Seemeilen Breite entlang der niederländischen Küste nicht gefährdet ist.

Die deutsche Regierung kündigt diese Maßnahme so rechtzeitig an, daß die feindlichen wie die neutralen Schiffe Zeit behalten, ihre Dispositionen wegen Anlaufens der am Kriegsschauplatze liegenden Häfen danach einzurichten. Sie darf erwarten, daß die neutralen Mächte die Lebensinteressen Deutschlands nicht weniger als die Englands berücksichtigen und dazu beitragen werden, ihre Angehörigen und deren Eigentum vom Kriegsschauplatze fernzuhalten. Dies darf um so mehr erwartet werden, als den neutralen Mächten daran liegen muß, den gegenwärtigen verheerenden Krieg so bald als möglich beendigt zu sehen.

Berlin, den 4. Februar 1915.

Nr. 1914. Endgültige englische Antwort vom 10. Februar 1915 auf die amerikanische Note vom 28. Dezember 1914.

(**Misc. 6 [1915]**, S. 7—16.)

Sir *Edward Grey* to Mr. *Page*.

Foreign Office, February 10, 1915.

Sir,

Your Excellency has already received the preliminary answer, which I handed to you on the 7th January, in reply to your note of the 28th December on the subject of the seizures and detentions of American cargoes destined for neutral European ports.

Since that date I have had further opportunity of examining into the trade statistics of the United States as embodied in the Customs returns, in order to see whether the belligerent action of Great Britain has been in any way the cause of the trade depression which your Excellency describes as existing in the United States, and also whether the seizures of vessels or cargoes which have been made by the British Navy have inflicted any loss on American owners for which our existing machinery provides no means of redress. In setting out the results of my investigation I think it well to take the opportunity of giving a general review of the methods employed by His Majesty's Government to intercept contraband trade with the enemy, of their consistency with the admitted right of a belligerent to intercept such trade, and also of the extent to which they have endeavoured to meet the representations and complaints from time to time addressed to them on behalf of the United States Government.

Towards the close of your note of the 28th December your Excellency described the situation produced by the action of Great Britain as a pitiful one to the commercial interests of the United States, and said that many of the great industries of the country were suffering because their products were denied long-established markets in neutral European countries contiguous to the nations at war.

It is unfortunately true that in these days, when trade and finance are cosmopolitan, any war — particularly a war of any magnitude — must result in a grievous dislocation of commerce including that of the nations which take no part in the war. Your Excellency will realise that in this tremen-

dous struggle, for the outbreak of which Great Britain is in no way responsible, it is impossible for the trade of any country to escape all injury and loss, but for such His Majesty's Government are not to blame.

I do not understand the paragraph which I have quoted from your Excellency's note as referring to these indirect consequences of the state of war, but to the more proximate and direct effect of our belligerent action in dealing with neutral ships and cargoes on the high seas. Such action has been limited to vessels on their way to enemy ports or ports in neutral countries adjacent to the theatre of war, because it is only through such ports that the enemy introduces the supplies which he requires for carrying on the war.

In my earlier note I set out the number of ships which had sailed from the United States for Holland, Denmark, Norway, Sweden, and Italy, and I there stated that only 8 of the 773 had been placed in the Prize Court, and that only 45 had been temporarily detained to enable particular consignments of cargo to be discharged for the purpose of Prize Court proceedings. To measure the effect of such naval action it is necessary to take into consideration the general statistics of the export trade of the United States during the months preceding the outbreak of war and those since the outbreak.

Taking the figures in millions of dollars, the exports of merchandise from the United States for the seven months of January to July 1914 inclusive, were 1,201, as compared with 1,327 in the corresponding months of 1913, a drop of 126 millions of dollars.

For the months of August, September, October, and November, that is to say, for the four months of the war preceding the delivery of your Excellency's note, the figures of the exports of merchandise were (again in millions of dollars) 667 as compared with 923 in the corresponding months of 1913, a drop of 256 millions of dollars.

If, however, the single article of cotton be eliminated from the comparison, the figures show a very different result. Thus the exports of all articles of merchandise other than cotton from the United States during the first seven months of 1914 were 966 millions of dollars as against 1,127 millions in 1913, a drop of 161 millions of dollars, or 14½ per cent. On the other hand, the exports of the same articles during the months August to November amounted to 608 millions of dollars as compared with 630 millions in 1913, a drop of only 22 millions, or less than 4 per cent.

It is therefore clear that, if cotton be excluded, the effect of the war has been not to increase but practically to arrest the decline of American exports which was in progress earlier in the year. In fact, any decrease in American exports which is attributable to the war is essentially due to cotton. Cotton is an article which cannot possibly have been affected by the exercise of our belligerent rights, for, as your Excellency is aware, it has not been declared by His Majesty's Government to be contraband of war, and the rules under which we are at present conducting our belligerent operations give us no power in the absence of a blockade to seize or interfere with it when on its way to a belligerent country in neutral ships. Consequently no cotton has been touched.

Into the causes of the decrease in the exports of cotton I do not feel that there is any need for me to enter, because, whatever may have been the cause, it is not to be found in the exercise of the belligerent rights of visit, search, and capture, or in our general right when at war to intercept the contraband trade of our enemy. Imports of cotton to the United Kingdom fell as heavily as those to other countries. No place felt the outbreak of war more acutely than the cotton districts of Lancashire, where for a time

an immense number of spindles were idle. Though this condition has now to a large extent passed away, the consumption of the raw material in Great Britain was temporarily much diminished. The same is no doubt true of France.

The general result is to show convincingly that the naval operations of Great Britain are not the cause of any diminution in the volume of American exports, and that if the commerce of the United States is in the unfavourable condition which your Excellency describes, the cause ought in fairness to be sought elsewhere than in the activities of His Majesty's naval forces.

I may add that the circular issued by the Department of Commerce at Washington on the 23rd January, admits a marked improvement in the foreign trade of the United States, which we have noted with great satisfaction. The first paragraph of the circular is worth quoting verbatim:—

„A marked improvement in our foreign trade is indicated by the latest reports issued by the Department of Commerce through its Bureau of Foreign and Domestic Commerce, sales of foodstuffs and certain lines of manufactures having been unusually large in November, the latest period for which detailed information is at hand. In that month exports aggregated 206 000 000 dollars, or double the total for August last, when, by reason of the outbreak of war, our foreign trade fell to the lowest level reached in many years. In December there was further improvement, the month's exports being valued at 246 000 000 dollars, compared with 233 000 000 in December 1913, and within 4 000 000 of the high record established in December 1912.“

A better view of the situation is obtained by looking at the figures month by month. The exports of merchandise for the last five months have been (in millions of dollars):—

August	110
September	156
October	194
November	205
December	246

The outbreak of war produced in the United States, as it did in all neutral countris, an acute but temporary disturbance of trade. Since that time there seems to have been a steady recovery, for to-day the exports from the United States stand at a higher figure than on the same date last year.

Before passing away from the statistics of trade, and in order to demonstrate still more clearly if necessary that the naval operations of Great Britain and her Allies have had no detrimental effect on the volume of trade between the United States and neutral countries, it is worth while to analyse the figures of the exports to Europe since the outbreak of hostilities. For this purpose the European countris ought to be grouped under three heads: Great Britain and those fighting with her, neutral countries, and enemy countries. It is, however, impossible for me to group the countries in this way satisfactorily, as the figures relating to the export trade of the United States with each country have not yet been published. In the preliminary statement of the export trade of the United States with foreign countries only principal countries are shown, and various countries which are tabulated separately in the more detailed monthly summary of commerce and finance are omitted. Those omitted include not only the Scandinavian countries, the exports to which are of peculiar importance in dealing with this question, but also Austria.

So far as it is possible to distribute the figures under the headings which I have indicated above (all the figures being given in thousands of dollars), the results are as follows:—

Total exports to Europe from the 1st August to the 30th November, 413 995, as against 597 342 in 1913. Of these, Great Britain and her Allies took 288 312, as against 316 805 in 1913. Germany and Belgium took 1881, as against 177 136 in 1913; whereas neutral countries (among which Austria-Hungary is unavoidably included) took 123 802, as against 103 401 in 1913.

The general complaint in your Excellency's note was that the action of Great Britain was affecting adversely the trade of the United States with neutral countries. The naval operations of Great Britain certainly do not interfere with commerce from the United States on its way to the United Kingdom and the allied countries, and yet the exports of Great Britain and her Allies during those four months diminished to the extent of over 28 000 000 dollars, whereas those to neutral countries and Austria increased by over 20 000 000 dollars.

The inference may fairly be drawn from these figures, all of which are taken from the official returns published by the United States Government, that not only has the trade of the United States with the neutral countries in Europe been maintained as compared with previous years, but also that a substantial part of this trade was, in fact, trade intended for the enemy countries going through neutral ports by routes to which it was previously unaccustomed.

One of the many inconveniences to which this great war is exposing the commerce of all neutral countries is undoubtedly the serious shortage in shipping available for ocean transport, and the consequential result of excessive freights.

It cannot fairly be said that this shortage is caused by Great Britain's interference with neutral ships. At the present time there are only seven neutral vessels awaiting adjudication in the Prize Courts in this country, and three in those in the British Dominions. As your Excellency is aware, I have already instructed our Ambassador at Washington to remind the parties who are interested in these vessels that it is open to them to apply to the Court for the release of these ships on bail, and if an application of this sort is made by them it is not likely to be opposed by the Crown. There is therefore no reason why such an application should not be favourably entertained by the Court, and, if acceded to, all these vessels will again be available for the carriage of commerce. Only one neutral vessels is now detained in this country in addition to those awaiting adjudication in the Prize Court.

Every effort has been made in cases in which it has been found necessary to institute proceedings against portions of the cargo to secure the speedy discharge of the cargo and the release of the ship, so as to enable it to resume work. Great Britain is suffering from the shortage of shipping and the rise in freights as acutely as, if not more than, other nations, and His Majesty's Government have taken every step that they could consistently with their belligerent interests to increase the tonnage available for the transport of sea-borne commerce. The enemy ships which have been condemned in the Prize Courts in this country are being sold as rapidly as possible in order that they may become available for use; and those which have been condemned in the Prize Courts oversea are being brought to this country in order that they may be disposed of here, and again placed in active employment.

The difficulties have been accentuated by the unforeseen consequences of the convention which was signed at The Hague in 1907 relative to the status of enemy merchant vessels at the outbreak of war. This convention was a well-intentioned effort to diminish the losses which war must impose upon innocent persons, and provided that enemy merchant ships seized by a belligerent in whose ports they lay at the outbreak of war should not be condemned, but should merely be detained for the period of the war, unless they were liberated in the days of grace. We could come to no arrangement with the German Government for the reciprocal grant of days of grace, and the German merchant vessels lying in British ports when the war broke out have therefore been sentenced to detention in lieu of condemnation. The normal result would have been still further to reduce the volume of shipping available for the commerce of the world. To ease the situation, however, His Majesty's Government are resorting to the power of requisitioning which is given by the convention, so that these ships may again be placed in active service.

Your Excellency will see therefore that His Majesty's Government are doing all in their power to increase the volume of shipping available. I hope it will be realised that the detention of neutral ships by His Majesty's Government with a view to the capture of contraband trade on its way to the enemy has not contributed nearly so much to the shortage of shipping as has the destruction of neutral vessels by submarine mines indiscriminately laid by the enemy on the high seas, many miles from the coast, in the track of merchant vessels. Up till now twenty-five neutral vessels have been reported as destroyed by mines on the high seas; quite apart from all questions of the breach of treaties and the destruction of life, there is far more reason for protest on the score of belligerent interference with innocent neutral trade through the mines scattered by the enemy than through the British exercise of the right of seizing contraband.

I trust that what I have said above will be sufficient to convince your Excellency's Government that the complaints that the naval policy of Great Britain has interfered with the shipments of American products to long-established markets in neutral European countries is founded on a misconception.

In justice to the peoples of both countries, I feel that this opportunity should be taken to explain the lines on which His Majesty's Government have been acting hitherto, so as to show that the line they have followed is in no way inconsistent with the general fundamental principle of international law, and to indicate the care with which they have endeavoured to meet the representations which have been made by the United States Government from time to time during the war on these questions.

No one in these days will dispute the general proposition that a belligerent is entitled to capture contraband goods on their way to the enemy; that right has now become consecrated by long usage and general acquiescence. Though the right is ancient, the means of exercising it alter and develop with the changes in the methods and machinery of commerce. A century ago the difficulties of land transport rendered it impracticable for the belligerent to obtain supplies of sea-borne goods through a neighbouring neutral country. Consequently the belligerent actions of his opponents neither required nor justified any interference with shipments on their way to a neutral port. This principle was recognised and acted on in the decisions in which Lord *Stowell* laid down the lines on which captures of such goods should be dealt with.

The advent of steam power has rendered it as easy for a belligerent to supply himself through the ports of a neutral contiguous country as

through his own, and has therefore rendered it impossible for his opponent to refrain from interfering with commerce intended for the enemy merely because it is on its way to a neutral port.

No better instance of the necessity of countering new devices for despatching contraband goods to an enemy by new methods of applying the fundamental principle of the right to capture such contraband can be given than the steps which the Government of the United States found it necessary to take during the American Civil War. It was at that time that the doctrine of continuous voyage was first applied to the capture of contraband, that is to say, it was then for the first time that a belligerent found himself obliged to capture contraband goods on their way to the enemy, even though at the time of capture they were en route for a neutral port from which they were intended subsequently to continue their journey. The policy then followed by the United States Government was not inconsistent with the general principles already sanctioned by international law, and met with no protest from His Majesty's Government, though it was upon British cargoes and upon British ships that the losses and the inconvenience due to this new development of the application of the old rule of international law principally fell. The criticisms which have been directed against the steps then taken by the United States came, and come, from those who saw in the methods employed in Napoleonic times for the prevention of contraband a limitation upon the right itself, and failed to see that in Napoleonic times goods on their way to a neutral port were immune from capture, not because the immediate destination conferred a privilege, but because capture under such circumstances was unnecessary.

The facilities which the introduction of steamers and railways have given to a belligerent to introduce contraband goods through neutral ports have imposed upon his opponent the additional difficulty, when endeavouring to intercept such trade, of distinguishing between the goods which are really destined for the commerce of that neutral country and the goods which are on their way to the enemy. It is one of the many difficulties with which the United States Government found themselves confronted in the days of the Civil War, and I cannot do better than quote the words which Mr. *Seward*, who was then Secretary of Staate, used in the course of the diplomatic discussion arising out of the capture of some goods on their way to Matamoros which were believed to be for the insurgents:

> „Neutrals engaged in honest trade with Matamoros must expect to experience inconvenience from the existing blockade of Brownsville and the adjacent coast of Texas. While this Government unfeignedly regrets this inconvenience, it cannot relinquish any of its belligerent rights to favour contraband trade with insurgent territory. By insisting upon those rights, however, it is sure that necessity for their exercise at all, which must be deplored by every friendly commercial Power, will the more speedily be terminated."

The opportunities now enjoyed by a belligerent for obtaining supplies through neutral ports are far greater than they were fifty years ago, and the geographical conditions of the present struggle lend additional assistance to the enemy in carrying out such importation. We are faced with the problem of intercepting such supplies when arranged with all the advantages that flow from elaborate organisation and unstinted expenditure. If our belligerent rights are to be maintained, it is of the first importance for us to distinguish between what is really bona fide trade intended for the neutral country concerned and the trade intended for the enemy country. Every effort is made by organisers of this trade to conceal the true destination, and if the innocent neutral trade is to be distinguished from the enemy trade

it is essential that His Majesty's Government should be entitled to make, and should make, careful enquiry with regard to the destination of particular shipments of goods even at the risk of some slight delay to the parties interested. If such enquiries were not made, either the exercise of our belligerent rights would have to be abandoned, tending to the prolongation of this war and the increase of the loss and suffering which it is entailing upon the whole world, or else it would be necessary to indulge in indiscriminate captures of neutral goods and their detention throughout all the period of the resulting Prize Court proceedings. Under the system now adopted it has been found possible to release without delay, and consequently without appreciable loss to the parties interested, all the goods of which the destination is shown as the result of the enquiries to be innocent.

It may well be that the system of making such enquiries is to a certain extent a new introduction, in that it has been practised to a far greater extent than in previous wars; but if it is correctly described as a new departure, it is a departure which is wholly to the advantage of neutrals, and which has been made for the purpose of relieving them so far as possible from loss and inconvenience.

There was a passage in a note which the State Department addressed to the British Ambassador at Washington on the 7th November to which I think it may be well to refer: —

„In the opinion of this Government, the belligerent right of visit and search requires that the search should be made on the high seas at the time of the visit, and that the conclusion of the search should rest upon the evidence found on the ship under investigation, and not upon circumstances ascertained from external sources."

The principle here enunciated appears to me to be inconsistent with the practice in these matters of the United States Government, as well as of the British Government. It certainly was not the rule upon which the United States Government acted either during the Civil War or during the Spanish-American War, nor has it ever been the practice of the British Government, nor so far as I am aware, of any other Government which has had to carry on a great naval war; as a principle I think it is impossible in modern times. The necessity for giving the belligerent captor full liberty to establish by all the evidence at his disposal the enemy destination with which the goods were shipped was recognised in all the leading decisions in the Prize Courts of the United States during the Civil War.

No clearer instance could be given than the reporter's statement of the case of the „Bermuda" (3 Wallace, 514): „The final destination of the cargo in this particular voyage was left so skilfully open . . . . that it was not quite easy to prove, with that certainty which American Courts require, the intention, which it seemed plain must have really existed. Thus to prove it required that truth should be collated from a variety of sources, darkened and disguised; from others opened as the cause advanced, and by accident only; from coincidences undesigned, and facts that were circumstantial. Collocations and comparisons, in short, brought largely their collective force in aid of evidence that was more direct."

It is not impossible that the course of the present struggle will show the necessity for belligerent action to be taken in various ways which may at first sight be regarded as a departure from old practice. In my note of the 7th January, I dealt at some lenght with the question of the necessity of taking vessels into port for the purposes of carrying out an effective search, where search was necessary; to that subject I feel that I need not again recur.

The growth in the size of steamships necessitates in many cases that the vessel should go into calm water, in order that even the right of visit, as apart from the right of search, should be exercised. In modern times a steamer is capable of pursuing her voyage irrespective of the conditions of the weather. Many of the neutral merchantmen which our naval officers are called upon to visit at sea are encountered by our cruisers in places and under conditions which render the launching of a boat impossible. The conditions during winter in the North Atlantic frequently render it impracticable for days together for a naval officer to board a vessel on her way to Scandinavian countries. If a belligerent is to be denied the right of taking a neutral merchantman, met with under such conditions, into calm water in order that the visiting officer may go aboard, the right of visit and of search would become a nullity.

The present conflict is not the first in which this necessity has arisen: as long ago as the Civil War the United States found it necessary to take vessels to United States ports in order to determine whether the circumstances justified their detention.

The same need arose during the Russo-Japanese War and also during the second Balkan War, when it sometimes happened that British vessels were made to deviate from their course and follow the cruisers to some spot where the right of visit and of search could be more conveniently carried out. In both cases this exercise of belligerent rights, although questioned at first by His Majesty's Government, was ultimately acquiesced in.

No Power in these days can afford during a great war to forgo the exercise of the right of visit and search. Vessels which are apparently harmless merchantmen can be used for carrying and laying mines, and even fitted to discharge torpedoes. Supplies for submarines can without difficulty be concealed under other cargo. The only protection against these risks is to visit and search thoroughly every vessel appearing in the zone of operations, and if the circumstances are such as to render it impossible to carry it out at the spot where the vessel was met with, the only practicable course is to take the ship to some more convenient locality for the purpose. To do so is not to be looked upon as a new belligerent right, but as an adaptation of the existing right to the modern conditions of commerce. Like all belligerent rights it must be exercised with due regard for neutral interests, and it would be unreasonable to expect a neutral vessel to make long deviations from her course for this purpose. It is for this reason that we have done all we can to encourage neutral merchantmen on their way to ports contiguous to the enemy country to visit some British port lying on their line of route in order that the necessary examination of the ship's papers, and, if required of the cargo, can be made under conditions of convenience to the ship herself. The alternative would be to keep a vessel which the naval officers desired to board waiting, it might be for days together, until the weather conditions enabled the visit to be carried out at sea.

No war has yet been waged in which neutral individuals have not occasionally suffered from unjustified belligerent action; no neutral nation has experienced this fact more frequently in the past than Great Britain. The only method by which it is possible to harmonise belligerent action with the rights of neutrals is for the belligerent nation to provide some adequate machinery by which in any such case the facts can be investigated and appropriate redress can be obtained by the neutral individual. In this country such machinery is provided by the powers which are given to the Prize Court to deal not only with captures, but also with claims for compensation. Order V, Rule 2, of the British Prize Court Rules provides that where a ship has been captured as prize, but has been subsequently released

by the captors, or has by loss, destruction, or otherwise ceased to be detained by them, without proceedings for condemnation having been taken, any person interested in the ship (which by Order I, Rule 2, includes goods) wishing to make a claim for costs and damages in respect thereof, shall issue a writ as provided by Order II. A writ so issued will initiate a proceeding, which will follow its ordinary course in the Prize Court.

This rule gives the Prize Court ample jurisdiction to deal with any claim for compensation by a neutral arising from the interference with a ship or goods by our naval forces. The best evidence that can be given of the discrimination and the moderation with which our naval officers have carried out their duties is to be found in the fact that up to this time no proceedings for the recovery of compensation have been initiated under the rule which I have quoted.

It is the common experience of every war that neutrals whose attempts to engage in suspicious trading are frustrated by a belligerent are wont to have recourse to their Government to urge that diplomatic remonstrances should be made on their behalf, and that redress should be obtained for them in this way. When an effective mode of redress is open to them in the courts of a civilised country by which they can obtain adequate satisfaction for any invasion of their rights which is contrary to the law of nations, the only course which is consistent with sound principle is that they should be referred to that mode of redress, and that no diplomatic action should be taken until their legal remedies have been exhausted, and they are in a position to show prima facie denial of justice.

The course adopted by His Majesty's Government during the American Civil War was in strict accordance with this principle. In spite of remonstrances from many quarters, they placed full reliance on the American Prize Courts to grant redress to the parties interested in cases of alleged wrongful capture by American ships of war, and put forward no claims until the opportunities for redress in those Courts had been exhausted. The same course was adopted in the Spanish-American War, when all British subjects who complained of captures or detentions of their ships were referred to the Prize Courts for relief.

Before leaving this subject may I remind your Excellency of the fact that at your request you are now supplied immediately by this Department with particulars of every ship under American colours which is detained, and of every shipment of cargo in which an American citizen appears to be the party interested. Not only is the fact of detention notified to your Excellency, but so far as is practicable the grounds upon which the vessel or cargo has been detained are also communicated to you; a concession which enables any United States citizen to take steps at once to protect his interests.

His Majesty's Government have also done all that lies in their power to ensure rapid action when ships are reported in British ports. They realise that the ship and cargo-owners may reasonably expect an immediate decision to be taken as to whether the ship may be allowed to proceed, and whether her cargo or any part of it must be discharged and put into the Prize Court. Realising that the ordinary methods of inter-Departmental correspondence might cause delays which could be obviated by another method of procedure, they established several months ago a special Committee, on which all the Departments concerned are represented. This Committee sits daily, and is provided with a special clerical staff. As soon as a ship reaches port full particulars are telegraphed to London, and the case is dealt with at the next meeting of the Committee, immediate steps being taken to carry out the action decided upon. By the adoption of this procedure it

has been found possible to reduce to a minimum the delays to which neutral shipping is exposed by the exercise of belligerent rights, and by the necessity, imposed by modern conditions, of examining with care the destination of contraband articles.

Particular attention is directed in your Excellency's note to the policy we are pursuing with regard to conditional contraband, especially food-stuffs, and it is there stated that a number of American cargoes have been seized without, so far as your Excellency's Government are informed, our being in possession of facts which warranted a reasonable belief that the shipments had in reality a belligerent destination, and in spite of the presumption of innocent use due to their being destined to neutral territory. The note does not specify any particular seizures as those which formed the basis of this complaint, and I am therefore not aware whether the passage refers to cargoes which were detained before or since the Order in Council of the 29th October was issued.

Your Excellency will no doubt remember that soon after the outbreak of war an Order of His Majesty in Council was issued under which no distinction was drawn in the application of the doctrine of continuous voyage between absolute contraband and conditional contraband, and which also imposed upon the neutral owner of contraband somewhat drastic conditions as to the burden of proof of the guilt or innocence of the shipment.

The principle that the burden of proof should always be imposed upon the captor has usually been admitted as a theory. In practice, however, it has almost always been otherwise, and any student of the Prize Courts decisions of the past or even of modern wars will find that goods seldom escape condemnation unless their owner was in a position to prove that their destination was innocent. An attempt was made some few years ago, in the unratified Declaration of London, to formulate some definite rules upon this subject, but time alone can show whether the rules there laid down will stand the test of modern warfare.

The rules which His Majesty's Government published in the Order in Council of the 20th August, 1914, were criticised by the United States Government as contrary to the generally recognised principles of international law, and as inflicting unnecessary hardship upon neutral commerce, and your Excellency will remember the prolonged discussions which took place between us throughout the month of October with a view to finding some new formulae which should enable us to restrict supplies to the enemy forces, and to prevent the supply to the enemy of materials essential for the making of munitions of war, while inflicting the minimum of injury and interference with neutral commerce. It was with this object that the Order in Council of the 29th October was issued, under the provisions of which a far greater measure of immunity is conferred upon neutral commerce. In that Order the principle of non-interference with conditional contraband on its way to a neutral port is in large measure admitted; only in three cases is the right to seize maintained, and in all those cases the opportunity is given to the claimant of the goods to establish their innocence.

Two of those cases are where the ship's papers afford no information as to the person for whom the goods are intended. It is only reasonable that a belligerent should be entitled to regard as suspicious cases where the shippers of the goods do not choose to disclose the name of the individual who is to receive them. The third case is that of goods addressed to a person in the enemy territory. In the peculiar circumstances of the present struggle, where the forces of the enemy comprise so large a proportion of the population, and where there is so little evidence of shipments on private

as distinguished from Government account, it is most reasonable that the burden of proof should rest upon the claimant.

The most difficult questions in connection with conditional contraband arise with reference to the shipment of food-stuffs. No country has maintained more stoutly than Great Britain in modern times the principle that a belligerent should abstain from interference with the food-stuffs intended for the civil population. The circumstances of the present struggle are causing His Majesty's Government some anxiety as to whether the existing rules with regard to conditional contraband, framed as they were with the object of protecting so far as possible the supplies which were intended for the civil population, are effective for the purpose, or suitable to the conditions present. The principle which I have indicated above is one which His Majesty's Government have constantly had to uphold against the opposition of continental Powers. In the absence of some certainty that the rule would be respected by both parties to this conflict, we feel great doubt whether it should be regarded as an established principle of international law.

Your Excellency will, no doubt, remember that in 1885, at the time when His Majesty's Government were discussing with the French Government this question of the right to declare food-stuffs not intended for the military forces to be contraband, and when public attention had been drawn to the matter, the Kiel Chamber of Commerce applied to the German Government for a statement of the latter's views on the subject. Prince *Bismarck*'s answer was as follows: —

„In answer to their representation of the 1st instant, I reply to the Chamber of Commerce that any disadvantage our commercial and carrying interests may suffer by the treatment of rice as contraband of war does not justify our opposing a measure which it has been thought fit to take in carrying on a foreign war. Every war is a calamity, which entails evil consequences not only on the combatants, but also on neutrals. These evils may easily be increased by the interference of a neutral Power with the way in which a third carries on the war, to the disadvantage of the subjects of the interfering Power, and by this means German commerce might be weighted with far heavier losses than a transitory prohibition of the rice trade in Chinese waters. The measure in question has for its object the shortening of the war by increasing the difficulties of the enemy, and is a justifiable step in war if impartially enforced against all neutral ships.“

His Majesty's Government are disposed to think that the same view is still maintained by the German Government.

Another circumstance which is now coming to light is that an elaborate machinery has been organised by the enemy for the supply of food-stuffs for the use of the German army from overseas. Under these circumstances it would be absurd to give any definite pledge that in cases where the supplies can be proved to be for the use of the enemy forces they should be given complete immunity by the simple expedient of despatching them to an agent in a neutral port.

The reason for drawing a distinction between food-stuffs intended for the civil population and those for the armed forces or enemy Government disappears when the distinction between the civil population and the armed forces itself disappears. In any country in which there exists such a tremendous organisation for war as now obtains in Germany, there is no clear division between those whom the Government is responsible for feeding and those whom it is not. Experience shows that the power to requisition will be used to the fullest extent in order to make sure that the wants of the military are supplied, and however much goods may be imported for civil

use it is by the military that they will be consumed if military exigencies require it, especially now that the German Government have taken control of all the food-stuffs in the country.

I do not wish to overburden this note with statistics, but in proof of my statement as to the unprecedented extent to which supplies are reaching neutral ports, I should like to instance the figures of the exports of certain meat products to Denmark during the months of September and October. Denmark is a country which in normal times imports a certain quantity of such products, but exports still more. In 1913, during the above two months, the United States exports of lard to Denmark were nil, as compared with 22 652 598 lb. in the same two months of 1914. The corresponding figures with regard to bacon were: 1913, nil; 1914, 1 022 195 lb.; canned beef, 1913, nil; 1914, 151 200 lb.; pickled and cured beef, 1913, 42 901 lb.; 1914, 156 143 lb.; pickled pork, 1913, nil; 1914, 812 872 lb.

In the same two months the United States exported to Denmark 280 176 gallons of mineral lubricating oil in 1914, as compared with 179 252 in 1913; to Norway, 335 468 gallons in 1914, as against 151 179 gallons in 1913; to Sweden, 896 193 gallons in 1914, as against 385 476 gallons in 1913.

I have already mentioned the framing of the Order in Council of the 29th October, and the transmission to your Excellency of particulars of ships and cargoes seized as instances of the efforts which we have made troughout the course of this war to meet all reasonable complaints made on behalf of American citizens, and in my note of the 7th January I alluded to the decision of our Prize Court in the case of the „Miramichi“, as evidencing the liberal principles adopted towards neutral commerce.

I should also like to refer to the steps which we took at the beginning of the war to ensure the speedy release of cargo claimed by neutrals on board enemy ships which were captured or detained at the outbreak of war. Under our Prize Court rules release of such goods can be obtained without the necessity of entering a claim in the Prize Court if the documents of title are produced to the officer representing His Majesty's Government, and the title to the goods is established to his satisfaction. It was shortly found, however, that this procedure did not provide for the case where the available evidence was so scanty that the officer representing the Crown was not justified in consenting to a release. In order, therefore, to ameliorate the situation we established a special Committee, with full powers to authorise the release of goods without insisting on full evidence of title being produced. This Committee dealt with the utmost expedition with a large number of claims. In the great majority of cases the goods claimed were released at once. In addition to the cases dealt with by this Committee a very large amount of cargo was released at once by the Procurator-General on production of documents. Claimants therefore obtained their goods without the necessity of applying to the Prize Court and of incurring the expense involved in retaining lawyers, and without the risk, which was in some cases a considerable one, of the goods being eventually held to be enemy property and condemned. We have reason to know that our action in this matter was highly appreciated by many American citizens.

Another instance of the efforts which His Majesty's Government have made to deal as leniently as possible with neutral interests may be found in the policy which we have followed with regard to the transfer to a neutral flag of enemy ships belonging to companies which were incorporated in the enemy country, but all of whose shareholders were neutral. The rules applied by the British and by the American Prize Courts have always treated the flag as conclusive in favour of the captors in spite of neutral proprietary

interests (see the case of the „Pedro“, 175 U. S. 354). In several cases, however, we have consented to waive our belligerent right to treat as enemy vessels ships belonging to companies incorporated in Germany which were subsidiary to and owned by American corporations. The only condition which we have imposed is that these vessels should take no further part in trade with the enemy country.

I have given these indications of the policy which we have followed, because I cannot help feeling that if the facts were more fully known as to the efforts which we have made to avoid inflicting any avoidable injury on neutral interests, many of the complaints which have been received by the Administration in Washington, and which led to the protest which your Excellency handed to me on the 29th December would never have been made. My hope is that when the facts which I have set out above are realised, and when it is seen that our naval operations have not diminished American trade with neutral countries, and that the lines on which we have acted are consistent with the fundamental principles of international law, it will be apparent to the Government and people of the United States that His Majesty's Government have hitherto endeavoured to exercise their belligerent rights with every possible consideration for the interests of neutrals.

It will still be our endeavour to avoid injury and loss to neutrals, but the announcement by the German Government of their intention to sink merchant vessels and their cargoes without verification of their nationality or character, and without making any provision for the safety of non-combatant crews or giving them a chance of saving their lives, has made it necessary for His Majesty's Government to consider what measures they should adopt to protect their interests. It is impossible for one belligerent to depart from rules and precedents and for the other to remain bound by them.

I have, etc. *E. Grey.*

Nr. 1915. Amerikanisches Memorandum vom 11. Februar 1915 an England.

(**Misc. 6 [1915]**, S. 16—17.)

Memorandum.

The American Ambassador called on Sir *Edward Grey* on the 11th February in consequence of the receipt from his Government of telegraphic instructions which were made public in Washington on the 12th February, and which appeared in the London press on the following day, and, after discussing the points raised by the Government of the United States, left the following memorandum:—

„The attention of the Secretary of State at Washington has been directed to certain statements which have appeared in the newspaper press regarding the reported action of the captain of the British steamship ‚Lusitania‘ in raising the flag of the United States as the vessel recently approached British waters in order to escape possible attacks by enemy submarines, and, in view of the announced purpose of the German Admiralty to engage in active naval operations in certain delimited sea areas adjacent to the coasts of Great Britain and Ireland, the Government of the United States feel a certain anxiety in considering the possibility of any general use of the flag of the United States by British vessels traversing those waters, since the effect of such a policy might be to bring about a menace to the lives and vessels of American citizens.

The Government of the United States therefore confidently trust that His Majesty's Government will do all in their power to check the use by British vessels of the American flag in the sea area defined in the German declaration, since it appears to them that such a practice might endanger the vessels of a friendly Power navigating those waters.

The American Government are making earnest representations to that of Germany touching the danger to American vessels and citizens which might result should the German Admiralty succeed in making their declaration effective."

American Embassy, London, February 11, 1915.

Nr. 1916. Amerikanische Antwortnote vom 12. Februar 1915 auf die deutsche Denkschrift vom 4. Februar 1915.

(**A. A. U.***) Nr. 3.)

Berlin, February 12, 1915.

Your Excellency:

I am instructed by my Government to communicate to Your Excellency the following:

The attention of the Government of the United States having been directed to the Proclamation of the German Admiralty issued on the fourth of February, 1915, that the waters surrounding Great Britain and Ireland including the whole of the English Channel are to be considered as comprised within the seat of war; that all enemy merchant vessels found in those waters afters the eighteenth instant will be destroyed although it may not always be possible to save crews and passengers; and that neutral vessels expose themselves to danger within this zone of war because in view of the misuse of neutral flags said to have been ordered by the British Government on the thirty-first of January and of the contingencies of maritime warfare it may not be possible always to exempt neutral vessels from attacks intended to strike enemy ships, feels it to be its duty to call the attention of the Imperial German Government with sincere respect and the most friendly sentiments, but very candidly and earnestly, to the very serious possibilities of the course of action apparently contemplated under the Proclamation. This Government views these possibilities with such grave concern that it feels it to be its privilege and indeed its duty in the circumstances to request the Imperial German Government to consider before action is taken the critical situation in respect of the relations between this country and Germany which might arise were the German naval forces, in carrying out the policy foreshadowed in the Admiralty's Proclamation, to destroy any merchant vessel of the United States or cause the death of American citizens.

It is of course not necessary to remind the German Government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which the Government of the United States does not understand to be proposed in this case. To declare or exercise the right to

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*) **Deutsches Weißbuch:**

Auswärtiges Amt. Schriftwechsel mit der Regierung der Vereinigten Staaten von Amerika, betreffend den Unterseehandelskrieg.

(Angeführt als **A. A. U.**)

Herausgeber.

attack and destroy any vessel entering a prescribed area of the high seas without first certainly determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare that this Government is reluctant to believe that the Imperial Government of Germany in this case contemplates it as possible. The suspicion that enemy ships are using neutral flags improperly can create no just presumption that all ships traversing a prescribed area are subject to the same suspicion. It is to determine exactly such questions that this Government understands the right of visit and search to have been recognized.

This Government has carefully noted the explanatory statement issued by the Imperial German Government at the same time with the Proclamation of the German Admiralty, and takes this occasion to remind the Imperial German Government very respectfully that the Government of the United States is open to none of the criticism for un-neutral action to which the German Government believe the Governments of certain other neutral nations have laid themselves open; that the Government of the United States has not consented to or acquiesced in any measures which may have been taken by the other belligerent nations in the present war which operate to restrain neutral trade, but has on the contrary taken in all such matters a position which warrants it in holding those Governments responsible in the proper way for any untoward effects upon American shipping which the accepted principles of international law do not justify, and that it therefore regards itself as free in the present instance to take with a clear conscience and upon accepted principles the position indicated in this note; if the commanders of German vessels of war should act upon the presumption that the flag of the United States was not being used in good faith and should destroy on the high seas an American vessel or the lives of American citizens it would be difficult for the Government of the United States to view the act in any other light than as an indefensible violation of neutral rights which it would be very hard to reconcile with the friendly relations now so happily subsisting between the two Governments.

If such a deplorable situation should arise the Imperial German Government can readily appreciate that the Government of the United States would be constrained to hold the Imperial German Government to a strict accountability for such acts of their naval authorities and to take any steps it may be necessary to take to safeguard American lives and property and to secure to American citizens the full enjoyment of their acknowledged rights an the high seas.

The Government of the United States, in view of these considerations which it urges with the greatest respect and sincere purpose of making sure that no misunderstanding may arise and no circumstances may occur that might even cloud the intercourse of the two Governments, expresses the confident hope and expectation that the Imperial German Government can and will give assurance that American citizens and their vessels will not be molested by the naval forces of Germany otherwise than by visit and search, though their vessels may be traversing the sea area delimited in the Proclamation of the German Admiralty.

It is added for the information of the Imperial Government that representations have been made to His Britannic Majesty's Government in respect to the unwarranted use of the American flag for the protection of British ships.

I avail myself of this opportunity to renew to Your Excellency the assurances of my most distinguished consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs etc. etc. etc.

Nr. 1917. Deutsche Erwiderung vom 16. Februar 1915 auf die amerikanische Note vom 12. Februar 1915.

(A. A. U. Nr. 4.)

Berlin, den 16. Februar 1915.

Die Kaiserlich deutsche Regierung hat die Mitteilung der Regierung der Vereinigten Staaten in dem Geiste des gleichen Wohlwollens und der gleichen Freundschaft geprüft, von welchem ihr diese Mitteilung diktiert erscheint.

Die Kaiserlich deutsche Regierung weiß sich mit der Regierung der Vereinigten Staaten darin eins, daß es für beide Teile in hohem Maße erwünscht ist, Mißverständnisse zu verhüten, die sich aus den von der deutschen Admiralität angekündigten Maßnahmen ergeben könnten, und dem Eintritt von Ereignissen vorzubeugen, die die zwischen den beiden Regierungen bisher in so glücklicher Weise bestehenden freundschaftlichen Beziehungen zu trüben vermöchten.

Die deutsche Regierung glaubt für diese Versicherung bei der Regierung der Vereinigten Staaten um so mehr auf volles Verständnis rechnen zu dürfen, als das von der deutschen Admiralität angekündigte Vorgehen, wie in der Note vom 4. d. M. eingehend dargelegt wurde, in keiner Weise gegen den legitimen Handel und die legitime Schiffahrt der Neutralen gerichtet ist, sondern lediglich eine durch Deutschlands Lebensinteressen erzwungene Gegenwehr gegen die völkerrechtswidrige Seekriegführung Englands darstellt, die sich bisher durch keinerlei Einspruch der Neutralen auf die vor dem Kriegsausbruch allgemein anerkannte Rechtsgrundlage hat zurückführen lassen.

Um in diesem kardinalen Punkte jeden Zweifel auszuschließen, erlaubt sich die deutsche Regierung nochmals die Sachlage festzustellen:

Deutschland hat bisher die geltenden völkerrechtlichen Bestimmungen auf dem Gebiete des Seekriegs gewissenhaft beobachtet, insbesondere hat es dem gleich zu Beginn des Krieges gemachten Vorschlag der amerikanischen Regierung, nunmehr die Londoner Seekriegsrechterklärung zu ratifizieren, unverzüglich zugestimmt und deren Inhalt auch ohne solche formelle Bindung unverändert in sein Prisenrecht übernommen. Die deutsche Regierung hat sich an diese Bestimmungen gehalten, auch wo sie ihren militärischen Interessen zuwiderliefen; so hat sie beispielsweise bis auf den heutigen Tag die Lebensmittelzufuhr von Dänemark nach England zugelassen, obwohl sie diese Zufuhr durch ihre Seestreitkräfte sehr wohl hätte unterbinden können.

Im Gegensatz hierzu hat England selbst schwere Verletzungen des Völkerrechts nicht gescheut, wenn es dadurch den friedlichen Handel Deutschlands mit dem neutralen Ausland lähmen konnte. Auf Einzelheiten wird die deutsche Regierung hier um so weniger einzugehen brauchen, als solche in der ihr zur Kenntnis mitgeteilten amerikanischen Note an die Britische Regierung vom 28. Dezember v. J. auf Grund fünfmonatiger Erfahrungen zutreffend, wenn auch nicht erschöpfend dargelegt sind.

Alle diese Uebergriffe sind zugestandenermaßen darauf gerichtet, Deutschland von aller Zufuhr abzuschneiden und dadurch die friedliche Zivilbevölkerung dem Hungertode preiszugeben, ein jedem Kriegsrecht und jeder Menschlichkeit widersprechendes Verfahren.

Die Neutralen haben die völkerrechtswidrige Unterbindung ihres Handels mit Deutschland nicht zu verhindern vermocht. Die Amerikanische Regierung hat zwar, wie Deutschland gern anerkennt, gegen das englische Verfahren Protest erhoben; trotz dieses Protestes und der Proteste der übrigen neutralen Regierungen hat England sich von dem eingeschlagenen Verfahren nicht abbringen lassen. So ist noch vor kurzem das amerikanische Schiff „Wilhelmina“ von englischer Seite aufgebracht worden, obwohl seine Ladung

lediglich für die deutsche Zivilbevölkerung bestimmt war und nach einer ausdrücklichen Erklärung der deutschen Regierung nur für diesen Zweck verwendet werden sollte.

Dadurch ist folgender Zustand geschaffen worden:

Deutschland ist unter stillschweigender oder protestierender Duldung der Neutralen von der überseeischen Zufuhr so gut wie abgeschnitten, und zwar nicht nur hinsichtlich solcher Waren, die absolute Konterbande sind, sondern auch hinsichtlich solcher, die nach dem vor Kriegsausbruch allgemein anerkannten Recht nur relative Konterbande oder überhaupt keine Konterbande sind.

England dagegen wird unter Duldung der neutralen Regierungen nicht nur mit solchen Waren versorgt, die keine oder nur relative Konterbande sind, von England aber gegenüber Deutschland als absolute Konterbande behandelt werden (Lebensmittel, industrielle Rohstoffe usw.), sondern sogar mit Waren, die stets und unzweifelhaft als absolute Konterbande gelten. Die deutsche Regierung glaubt insbesondere und mit dem größten Nachdruck darauf hinweisen zu müssen, daß ein auf viele Hunderte von Millionen Mark geschätzter Waffenhandel amerikanischer Lieferanten mit Deutschlands Feinden besteht.

Die deutsche Regierung gibt sich wohl Rechenschaft darüber, daß die Ausübung von Rechten und die Duldung von Unrecht seitens der Neutralen formell in deren Belieben steht und keinen formellen Neutralitätsbruch involviert; sie hat infolgedessen den Vorwurf des formellen Neutralitätsbruchs nicht erhoben. Die deutsche Regierung kann aber — gerade im Interesse voller Klarheit in den Beziehungen beider Länder — nicht umhin, hervorzuheben, daß sie mit der gesamten öffentlichen Meinung Deutschlands sich dadurch schwer benachteiligt fühlt, daß die Neutralen in der Wahrung ihrer Rechte auf den völkerrechtlich legitimen Handel mit Deutschland bisher keine oder nur unbedeutende Erfolge erzielt haben, während sie von ihrem Recht, den Konterbandehandel mit England und unseren anderen Feinden zu dulden, uneingeschränkten Gebrauch machen. Wenn es das formale Recht der Neutralen ist, ihren legitimen Handel mit Deutschland nicht zu schützen, ja sogar sich von England zu einer bewußten und gewollten Einschränkung des Handels bewegen zu lassen, so ist es auf der anderen Seite nicht minder ihr gutes, aber leider nicht angewendetes Recht, den Konterbandehandel, insbesondere den Waffenhandel mit Deutschlands Feinden, abzustellen.

Bei dieser Sachlage sieht sich die deutsche Regierung, nach sechs Monaten der Geduld und des Abwartens, genötigt, die mörderische Art der Seekriegführung Englands mit scharfen Gegenmaßnahmen zu erwidern. Wenn England in seinem Kampf gegen Deutschland den Hunger als Bundesgenossen anruft, in der Absicht, ein Kulturvolk von 70 Millionen vor die Wahl zwischen elendem Verkommen oder Unterwerfung unter seinen politischen und kommerziellen Willen zu stellen, so ist heute die deutsche Regierung entschlossen, den Handschuh aufzunehmen und an den gleichen Bundesgenossen zu appellieren; sie vertraut darauf, daß die Neutralen, die bisher sich den für sie nachteiligen Folgen des englischen Hungerkrieges stillschweigend oder protestierend unterworfen haben, Deutschland gegenüber kein geringeres Maß von Duldsamkeit zeigen werden, und zwar auch dann, wenn die deutschen Maßnahmen, in gleicher Weise wie bisher die englischen, neue Formen des Seekriegs darstellen.

Darüber hinaus ist die deutsche Regierung entschlossen, die Zufuhr von Kriegsmaterial an England und seine Verbündeten mit allen ihr zu Gebote stehenden Mitteln zu unterdrücken, wobei sie als selbstverständlich annimmt, daß die neutralen Regierungen, die bisher gegen den Waffenhandel mit Deutschlands Feinden nichts unternommen haben, sich der gewaltsamen

Unterdrückung dieses Handels durch Deutschland nicht zu widersetzen beabsichtigen.

Von diesen Gesichtspunkten ausgehend, hat die deutsche Admiralität die von ihr näher bezeichnete Zone als Seekriegsgebiet erklärt. Sie wird dieses Seekriegsgebiet soweit wie irgend angängig durch Minen sperren, auch die feindlichen Handelsschiffe auf jede andere Weise zu vernichten suchen.

So sehr nun auch der deutschen Regierung bei dem Handeln nach diesen zwingenden Gesichtspunkten jede absichtliche Vernichtung neutraler Menschenleben und neutralen Eigentums fernliegt, so will sie doch auf der anderen Seite nicht verkennen, daß durch die gegen England durchzuführenden Aktionen Gefahren entstehen, die unterschiedslos jeden Handel innerhalb des Seekriegsgebietes bedrohen. Dies gilt ohne weiteres von dem Minenkrieg, der auch bei strengster Innehaltung der völkerrechtlichen Grenzen jedes dem Minengebiet sich nähernde Schiff gefährdet.

Zu der Hoffnung, daß die Neutralen sich hiermit ebenso wie mit den ihnen durch die englischen Maßnahmen bisher zugefügten schweren Schädigungen abfinden werden, glaubt die deutsche Regierung um so mehr berechtigt zu sein, als sie gewillt ist, zum Schutz der neutralen Schiffahrt sogar im Kriegsgebiet alles zu tun, was mit der Durchführung ihres Zweckes irgendwie vereinbar ist.

Sie hat den ersten Beweis für ihren guten Willen geliefert, indem sie die von ihr beabsichtigten Maßnahmen mit einer Frist von nicht weniger als 14 Tagen ankündigte, um der neutralen Schiffahrt Gelegenheit zu geben, sich auf die Vermeidung der drohenden Gefahr einzurichten. Letzteres geschieht am sichersten durch das Fernbleiben von dem Seekriegsgebiet. Die neutralen Schiffe, die trotz dieser, die Erreichung des Kriegszwecks gegenüber England schwer beeinträchtigenden langfristigen Ankündigung sich in die gesperrten Gewässer begeben, tragen selbst die Verantwortung für etwaige unglückliche Zufälle. Die deutsche Regierung ihrerseits lehnt jede Verantwortung für solche Fälle und deren Folgen ausdrücklich ab.

Ferner hat die deutsche Regierung lediglich die Vernichtung der feindlichen innerhalb des Seekriegsgebiets angetroffenen Handelsschiffe angekündigt, nicht aber die Vernichtung aller Handelsschiffe, wie die amerikanische Regierung irrtümlich verstanden zu haben scheint. Auch diese Beschränkung, die die deutsche Regierung sich auferlegt, ist eine Beeinträchtigung des Kriegszwecks, zumal da bei der Auslegung des Begriffs der Konterbande, die Englands Regierung gegenüber Deutschland beliebt hat und die demgemäß die deutsche Regierung auch gegen England anwenden wird, auch den neutralen Schiffen gegenüber die Präsumption dafür sprechen wird, daß sie Konterbande an Bord haben. Auf das Recht, das Vorhandensein von Konterbande in der Fracht neutraler Schiffe festzustellen und gegebenenfalls aus dieser Feststellung die Konsequenzen zu ziehen, ist die Kaiserliche Regierung natürlich nicht gewillt zu verzichten.

Die deutsche Regierung ist schließlich bereit, mit der amerikanischen Regierung jede Maßnahme in die ernsthafteste Erwägung zu ziehen, die geeignet sein könnte, die legitime Schiffahrt der Neutralen im Kriegsgebiet sicherzustellen. Sie kann jedoch nicht übersehen, daß alle Bemühungen in dieser Richtung durch zwei Umstände erheblich erschwert werden:

1. durch den inzwischen wohl auch für die amerikanische Regierung außer Zweifel gestellten Mißbrauch der neutralen Flagge durch die englischen Handelsschiffe;
2. durch den bereits erwähnten Konterbandehandel, insbesondere mit Kriegsmaterial, der neutralen Handelsschiffe.

Hinsichtlich des letzteren Punktes gibt sich die deutsche Regierung der Hoffnung hin, daß sich die amerikanische Regierung bei nochmaliger

Erwägung zu einem dem Geiste wahrhafter Neutralität entsprechenden Eingreifen veranlaßt sehen wird.

Was den ersten Punkt anlangt, so ist der deutscherseits der amerikanischen Regierung bereits mitgeteilte Geheimbefehl der britischen Admiralität, der den englischen Handelsschiffen die Benutzung neutraler Flaggen anempfohlen hat, inzwischen durch eine Mitteilung des britischen Auswärtigen Amtes, das jenes Verfahren unter Berufung auf inneres englisches Recht als völlig einwandfrei bezeichnet, bestätigt worden. Die englische Handelsflotte hat den ihr erteilten Rat auch sogleich befolgt, wie der amerikanischen Regierung aus den Fällen der Dampfer „Lusitania“ und „Laërtes“ bekannt sein dürfte. Weiter hat die britische Regierung die englischen Handelsschiffe mit Waffen versehen und sie angewiesen, den deutschen Unterseebooten gewaltsam Widerstand zu leisten. Unter diesen Umständen ist es für die deutschen Unterseeboote sehr schwierig, die neutralen Handelsschiffe als solche zu erkennen; denn auch eine Untersuchung wird in den meisten Fällen nicht erfolgen können, da die bei einem maskierten englischen Schiff zu erwartenden Angriffe das Untersuchungskommando und das Boot selbst der Gefahr der Vernichtung aussetzen.

Die britische Regierung wäre hiernach in der Lage, die deutschen Maßnahmen illusorisch zu machen, wenn ihre Handelsflotte bei dem Mißbrauch neutraler Flaggen verharrt und die neutralen Schiffe nicht anderweit in zweifelloser Weise gekennzeichnet werden. Deutschland muß aber in dem Notstand, in den es rechtswidrig versetzt wird, seine Maßnahmen unter allen Umständen wirksam machen, um dadurch den Gegner zu einer dem Völkerrecht entsprechenden Führung des Seekriegs zu zwingen und so die Freiheit der Meere, für die es von jeher eingetreten ist und für die es auch heute kämpft, wiederherzustellen.

Die deutsche Regierung hat es daher begrüßt, daß die amerikanische Regierung gegen den rechtswidrigen Gebrauch ihrer Flagge bei der britischen Regierung Vorstellungen erhoben hat, und gibt der Erwartung Ausdruck, daß dieses Vorgehen England künftig zur Achtung der amerikanischen Flagge veranlassen wird.

In dieser Erwartung sind die Befehlshaber der deutschen Unterseeboote, wie bereits in der Note vom 4. d. M. zum Ausdruck gebracht worden ist, angewiesen worden, Gewalttätigkeiten gegen amerikanische Handelsschiffe zu unterlassen, soweit sie als solche erkennbar sind.

Um in der sichersten Weise allen Folgen einer Verwechslung — allerdings nicht auch der Minengefahr — zu begegnen, empfiehlt die deutsche Regierung den Vereinigten Staaten, ihre mit friedlicher Ladung befrachteten, den englischen Seekriegsschauplatz berührenden Schiffe durch Konvoyierung kenntlich zu machen. Die deutsche Regierung glaubt dabei voraussetzen zu dürfen, daß nur solche Schiffe konvoyiert werden, die keine Waren an Bord haben, die nach der von England gegenüber Deutschland angewendeten Auslegung als Konterbande zu betrachten sind. Ueber die Art der Durchführung einer solchen Konvoyierung ist die deutsche Regierung bereit, mit der amerikanischen Regierung alsbald in Verhandlungen einzutreten. Sie würde es aber mit besonderem Dank anerkennen, wenn die amerikanische Regierung ihren Handelsschiffen dringend empfehlen wollte, jedenfalls bis zur Regelung der Flaggenfrage den englischen Seekriegsschauplatz zu vermeiden.

Die deutsche Regierung gibt sich der zuversichtlichen Hoffnung hin, daß die amerikanische Regierung den schweren Kampf, den Deutschland um sein Dasein führt, in seiner ganzen Bedeutung würdigen und aus den vorstehenden Aufklärungen und Zusagen ein volles Verständnis für die Beweggründe und Ziele der von ihr angekündigten Maßnahmen gewinnen wird.

Die deutsche Regierung wiederholt, daß sie in der bisher peinlich von ihr geübten Rücksicht auf die Neutralen sich nur unter dem stärksten Zwang der nationalen Selbsterhaltung zu den geplanten Maßnahmen entschlossen hat. Sollte es der amerikanischen Regierung vermöge des Gewichts, das sie in die Wagschale des Geschickes der Völker zu legen berechtigt und imstande ist, in letzter Stunde noch gelingen, die Gründe zu beseitigen, die der deutschen Regierung jenes Vorgehen zur gebieterischen Pflicht machen, sollte die amerikanische Regierung insbesondere einen Weg finden, die Beachtung der Londoner Seekriegsrechtserklärung auch von seiten der mit Deutschland kriegführenden Mächte zu erreichen und Deutschland dadurch die legitime Zufuhr von Lebensmitteln und industriellen Rohstoffen zu ermöglichen, so würde die deutsche Regierung hierin ein nicht hoch genug anzuschlagendes Verdienst um die humanere Gestaltung der Kriegführung anerkennen und aus der also geschaffenen neuen Sachlage gern die Folgerungen ziehen.

Indem der Unterzeichnete den Herrn Botschafter bittet, vorstehendes zur Kenntnis der amerikanischen Regierung zu bringen, benutzt er diesen Anlaß, um die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *Jagow*.

Seiner Exzellenz dem Botschafter der Vereinigten Staaten,
Herrn *James W. Gerard*.

Nr. 1918. Englisches Memorandum vom 19. Februar 1915 (Antwort auf die amerikanische Note vom 16. Februar 1915).

(**Misc. 6 [1915]**, S. 19—20.)

Memorandum handed to the United States Ambassador,
February 19, 1915.

1. The communication made by the United States Ambassador in his note to Sir *Edward Grey* of the 16th instant has been carefully considered, and the following observations are offered in reply: —

2. At the time when His Majesty's Government gave directions for the seizure of the cargo of the steamship „Wilhelmina" as contraband they had before them the text of the decree made by the German Federal Council on the 25th January, under article 45 of which all grain and flour imported into Germany after the 31st January was declared deliverable only to certain organisations under direct Government control or to municipal authorities. The vessel was bound for Hamburg, one of the Free Cities of the German Empire, the government of which is vested in the municipality. This was one of the reasons actuating His Majesty's Government in deciding to bring the cargo of the „Wilhelmina" before the Prize Court.

3. Information has only now reached them that by a subsequent decree, dated the 6th February, the above provision in article 45 of the previous decree was repealed, it would appear for the express purpose of rendering difficult the anticipated proceedings against the „Wilhelmina". The repeal was not known to His Majesty's Government at the time of detention of the cargo, or, indeed, until now.

4. How far the ostensible exception of imported supplies from the general Government monopoly of all grain and flour set up by the German Government may affect the question of the contraband nature of the shipment seized is a matter which will most suitably be investigated by the Prize Court.

5. It is however necessary to state that the German decree is not the only ground on which the submission of the cargo of the „Wilhelmina" to a Prize Court is justified. The German Government have in public announce-

ments claimed to treat practically every town or port on the English east coast as a fortified place and base of operations. On the strength of this contention they have subjected to bombardment the open towns of Yarmouth, Scarborough and Whitby, among others. On the same ground, a number of neutral vessels sailing for English ports on the east coast with cargoes of goods on the German list of conditional contraband have been seized by German cruisers and brought before the German Prize Court. Again, the Dutch vessel „Maria", having sailed from California with a cargo of grain consigned to Dublin and Belfast, was sunk in September last by the German cruiser „Karlsruhe". This could only have been justified if, among other things, the cargo could have been proved to be destined for the British Government or armed forces and if a presumption to this effect had been established owing to Dublin or Belfast being considered a fortified place or a base for the armed forces.

6. The German Government cannot have it both ways. If they consider themselves justified in destroying by bombardment the lives and property of peaceful civil inhabitants of English open towns and watering-places, and in seizing and sinking ships and cargoes of conditional contraband on the way thither, on the ground that they were consigned to a fortified place or base, à fortiori His Majesty's Government must be at liberty to treat Hamburg, which is in part protected by the fortifications at the mouth of the Elbe, as a fortified town, and a base of operations and supply for the purposes of article 34 of the Declaration of London. If the owners of the cargo of the „Wilhelmina" desire to question the validity in international law of the action taken by order of His Majesty's Government, they will have every opportunity of establishing their case in due course before the Prize Court, and His Majesty's Government would, in this connection, recall the attention of the United States Government to the considerations put forward in Sir *E. Grey's* note to Mr. *Page* of the 10th instant as to the propriety of awaiting the result of Prize Court proceedings before diplomatic action is initiated. It will be remembered that they have from the outset given a definite assurance that the owners of the „Wilhelmina" as well as the owners of her cargo, if found to be contraband, would be equitably indemnified.

7. There is one further observation to which His Majesty's Government think it right, and appropriate in the present connection, to give expression. They have not, so far, declared foodstuffs to be absolute contraband. They have not interfered with any neutral vessels on account of their carrying foodstuffs, except on the basis of such foodstuffs being liable to capture if destined for the enemy forces or Governments. In so acting, they have been guided by the general principle, of late universally upheld by civilised nations, and observed in practice, that the civil populations of countries at war are not to be exposed to the treatment rightly reserved for combatants. This distinction has to all intents and purposes been swept away by the novel doctrines proclaimed and acted upon by the German Government.

8. It is unnecessary here to dwell upon the treatment that has been meted out to the civil population of Belgium and those parts of France which are in German occupation. When Germany, long before any mines had been laid by British authorities, proceeded to sow mines upon the high seas, and, by this means, sunk a considerable number not only of British but also of neutral merchantmen with their unoffending crews, it was, so His Majesty's Government hold, open to them to take retaliatory measures, even if such measures were of a kind to involve pressure on the civil population — not indeed of neutral States — but of their enemies. They refrained from doing so.

9. When, subsequently, English towns and defenceless British subjects including women and children were deliberately and systematically fired upon and killed by ships flying the flag of the Imperial German navy, when quiet country towns and villages, void of defences, and possessing no military or naval importance, were bombarded by German airships, His Majesty's Government still abstained from drawing the logical consequences from this form of attack on defenceless citizens. Further steps in the same direction are now announced, and in fact have already been taken, by Germany. British merchant vessels have been torpedoed at sight without any attempt being made to give warning to the crew, or any opportunity being given to save their lives; a torpedo has been fired against a British hospital ship in daylight; and similar treatment is threatened to all British merchant vessels in future as well as to any neutral ships that may happen to be found in the neighbourhood of the British Isles.

10. Faced with this situation, His Majesty's Government consider it would be altogether unreasonable that Great Britain and her Allies should be expected to remain indefinitely bound, to their grave detriment, by rules and principles of which they recognise the justice if impartially observed as between belligerents, but which are at the present moment openly set at defiance by their enemy.

11. If therefore His Majesty's Government should hereafter feel constrained to declare foodstuffs absolute contraband, or to take other measures for interfering with German trade, by way of reprisals, they confidently expect that such action will not be challenged on the part of neutral States by appeals to laws and usages of war whose validity rests on their forming an integral part of that system of international doctrine which as a whole their enemy frankly boasts the liberty and intention to disregard, so long as such neutral States cannot compel the German Government to abandon methods of warfare which have not in recent history been regarded as having the sanction of either law or humanity.

Foreign Office, February 19, 1915.

Nr. 1919. Amerikanische Note vom 22. Februar 1915 an Deutschland.

(**A. A. U.** Nr. 5.)

Berlin, February 22, 1915.

The undersigned Ambassador Extraordinary and Plenipotentiary of the United States of America, acting under instructions from his Government, has the honor to communicate the following to his Excellency Mr. *von Jagow,* Imperial Secretary of State for Foreign Affairs:

The American Government, having in view the correspondence which has passed between it and the Government of Great Britain and Germany, respectively on the subject of the use of neutral flags by British merchant vessels and the declaration of a zone of war by the German Admiralty, ventures to give expression to the hope, that by means of reciprocal concessions the two belligerent Governments may find a basis for an agreement which will result in the relief of neutral ships engaged in peaceful trade from the serious dangers which will be incurred by them in traversing the high seas adjacent to the coasts of the belligerent countries.

The American Government respectfully suggests that an agreement might be reached in terms similar to the following. This suggestion is not to be deemed in any sense a proposal put forth by the American Govern-

ment, for it naturally is fully aware of the fact that to propose terms of an agreement between Germany and Great Britain is not its privilege even though the question be one of direct and deep interest to it and the people of the United States. It merely ventures to take the liberty which it trusts may be accorded a sincere friend prompted by the desire of embarrassing neither of the nations concerned, and of serving, if it may, the common interest of humanity. It is in hope, that the views and suggestions of the the German and British Governments on a subject of capital interest to the whole world may be elicited that the course outlined is offered.

Great Britain and Germany to agree:

1. That no floating mines will be strewn by either singly whether in territorial waters or upon the high seas; that no anchored mines will be planted by either upon the high seas except solely for defensive purposes within cannon shot of harbors; and that all mines shall bear the stamp of the Government which plants them, and shall be of such a construction that upon drifting from their moorings they become harmless.
2. That submarines will not be employed by either to attack merchant vessels of any nationality whatsoever except in the enforcement of the right of visit and search.
3. That the Government of each country will make it a requirement that their respective merchant vessels shall not use neutral flags for the purpose of ruse de guerre or disguise.

Great Britain to agree:

That food and foodstuffs will not be placed on the list of absolute contraband, and that the British authorities will not interfere with or detain shipments of such commodities, if they are consigned to agencies in Germany designated by the United States to receive and distribute cargoes of such commodities to licensed German retailers for distribution to the noncombatant population alone.

Germany to agree:

That food or foodstuffs imported into Germany from the Uuited States — or from any other neutral country asking it, as the case may be — shall be consigned to agencies to be designated by the American Government; that such American agencies shall have full charge and control of the receipt and distribution of these importations, without interference on the part of the German Government, and shall distribute only to retailers furnished with licenses by the German Government which give them the right to receive and furnish such food and foodstuffs to noncombatants solely; that if retailers violate the terms of their licenses in any way, than they shall forfeit their rights to receive such food and foodstuffs for the purpose described; and that the German Government will not requisition any such food and foodstuffs for any purpose, of whatever description, or cause them to be diverted to the use of Germany's armed forces.

The American Government does not wish, in submitting the basis of agreement outlined above, to be understood as admitting or denying any right of belligerent or neutral established by the principles of the law of nations, but would regard the agreement, if acceptable to the Powers interested as a modus vivendi, founded on expediency rather than legal right, and as not binding upon the United States, whether in the present or in a modified form, until the American Government accepts it.

The undersigned has the honor to add, that an identical note has been communicated to the British Government and avails himself of the oppor-

tunity to renew to His Excellency the Imperial Secretary of State for Foreign Affairs the assurances of his highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow*,
Imperial Secretary of State for Foreign Affairs etc. etc. etc.

Nr. 1920. Deutsche Antwort vom 28. Februar 1915 auf die amerikanische Note vom 22. Februar 1915.

(**A. A. U.** Nr. 6.)

Berlin, den 28. Februar 1915.

Die Kaiserlich deutsche Regierung hat von der Anregung der amerikanischen Regierung, für die Seekriegsführung Deutschlands und Englands gewisse Grundsätze zum Schutze der neutralen Schiffahrt zu vereinbaren, mit lebhaftem Interesse Kenntnis genommen. Sie erblickt darin einen neuen Beweis für die von deutscher Seite voll erwiderten freundschaftlichen Gefühle der amerikanischen gegenüber der deutschen Regierung.

Auch den deutschen Wünschen entspricht es, daß der Seekrieg nach Regeln geführt wird, die, ohne die eine oder die andere kriegführende Macht in ihren Kriegsmitteln einseitig zu beschränken, ebensowohl den Interessen der Neutralen wie den Geboten der Menschlichkeit Rechnung tragen. Demgemäß ist schon in der deutschen Note vom 16. d. M. darauf hingedeutet worden, daß die Beachtung der Londoner Seekriegsrechtserklärung durch Deutschlands Gegner eine neue Lage schaffen würde, aus der die Folgerungen zu ziehen die deutsche Regierung gern bereit wäre.

Von dieser Auffassung ausgehend, hat die deutsche Regierung die Anregung der amerikanischen Regierung einer aufmerksamen Prüfung unterzogen und glaubt darin in der Tat eine geeignete Grundlage für die praktische Lösung der entstandenen Fragen zu erkennen. Zu einzelnen Punkten der amerikanischen Note darf sie nachstehendes bemerken:

1. Was die Legung von Minen betrifft, so würde die deutsche Regierung bereit sein, die angeregte Erklärung über die Nichtanwendung von Treibminen und die Konstruktion der verankerten Minen abzugeben. Ferner ist sie mit der Anbringung von Regierungsstempeln auf den auszulegenden Minen einverstanden. Dagegen erscheint es ihr für die kriegführenden Mächte nicht angängig, auf eine offensive Verwendung verankerter Minen völlig zu verzichten.

2. Die deutsche Regierung würde sich verpflichten, daß ihre Unterseeboote gegen Handelsschiffe irgendwelcher Flagge nur insoweit Gewalt anwenden werden, als dies zur Durchführung des Rechtes der Anhaltung und Untersuchung erforderlich ist. Ergibt sich die feindliche Nationalität des Schiffes oder das Vorhandensein von Konterbande, so würden die Unterseeboote nach den allgemein völkerrechtlichen Regeln verfahren.

3. Wie die amerikanische Note vorsieht, setzt die angegebene Beschränkung in der Verwendung der Unterseeboote voraus, daß sich die feindlichen Handelsschiffe des Gebrauchs der neutralen Flagge und anderer neutraler Abzeichen enthalten. Dabei dürfte es sich von selbst verstehen, daß sie auch von einer Bewaffnung sowie von der Leistung jedes tätlichen Widerstands absehen, da ein solches völkerrechtswidriges Verhalten ein dem Völkerrecht entsprechendes Vorgehen der Unterseeboote unmöglich macht.

4. Die von der amerikanischen Regierung angeregte Regelung der legitimen Lebensmittelzufuhr nach Deutschland erscheint im allgemeinen annehmbar; die Regelung würde sich selbstverständlich auf die Seezufuhr beschränken,

andererseits aber auch die indirekte Zufuhr über neutrale Häfen umfassen. Die deutsche Regierung würde daher bereit sein, Erklärungen der in der amerikanischen Note vorgesehenen Art abzugeben, so daß die ausschließliche Verwendung der eingeführten Lebensmittel für die friedliche Zivilbevölkerung gewährleistet sein würde. Daneben muß aber die deutsche Regierung Wert darauf legen, daß ihr auch die Zufuhr anderer der friedlichen Volkswirtschaft dienenden Rohstoffe einschließlich der Futtermittel ermöglicht wird. Zu diesem Zwecke hätten die feindlichen Regierungen die in der Freiliste der Londoner Seekriegsrechtserklärung erwähnten Rohstoffe frei nach Deutschland gelangen zu lassen und die auf der Liste der relativen Konterbande stehenden Stoffe nach den gleichen Grundsätzen wie die Lebensmittel zu behandeln.

Die deutsche Regierung gibt sich der Hoffnung hin, daß die von der amerikanischen Regierung angebahnte Verständigung unter Berücksichtigung der vorstehenden Bemerkungen zustande kommt, und daß auf diese Weise die friedliche neutrale Schiffahrt und der friedliche neutrale Handel unter den Rückwirkungen des Seekriegs nicht mehr als unbedingt nötig zu leiden haben werden. Solche Rückwirkungen würden sich übrigens noch wesentlich verringern lassen, wenn — worauf bereits in der deutschen Note vom 16. d. M. hingewiesen worden ist — Mittel und Wege gefunden werden könnten, um die Zufuhr von Kriegsmaterial aus neutralen nach kriegführenden Staaten auf Schiffen irgendwelcher Flagge auszuschließen.

Ihre definitive Stellungnahme muß sich die deutsche Regierung selbstverständlich bis zu demjenigen Zeitpunkt vorbehalten, in welchem sie auf Grund weiterer Mitteilungen der amerikanischen Regierung in der Lage ist, zu übersehen, welche Verpflichtungen die britische Regierung ihrerseits zu übernehmen bereit ist.

Der Unterzeichnete benutzt diesen Anlaß, um dem Herrn Botschafter die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *Jagow.*

Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard.*

Nr. 1921. Englische Erklärung vom 1. März 1915 an die Neutralen über Vergeltungsmaßnahmen gegen die deutsche Kriegsgebietserklärung.

(**Misc. 6 [1915],** S. 22—23.)

Germany has declared that the English Channel, the north and west coasts of France, and the waters round the British Isles are a „war area“, and has officially notified that „all enemy ships found in that area will be destroyed, and that neutral vessels may be exposed to danger“. This is in effect a claim to torpedo at sight, without regard to the safety of the crew or passengers, any merchant vessel under any flag. As it is not in the power of the German Admiralty to maintain any surface craft in these waters, this attack can only be delivered by submarine agency. The law and custom of nations in regard to attacks on commerce have always presumed that the first duty of the captor of a merchant vessel is to bring it before a Prize Court, where it may be tried, where the regularity of the capture may be challenged, and where neutrals may recover their cargoes. The sinking of prizes is in itself a questionable act, to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all the crew or passengers (if there are passengers on board). The responsibility for discriminating between neutral and enemy vessels, and between neutral

and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo, and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent. It is upon this basis that all previous discussions of the law for regulating warfare at sea have proceeded.

A German submarine, however, fulfils none of these obligations. She enjoys no local command of the waters in which she operates. She does not take her captures within the jurisdiction of a Prize Court. She carries no prize crew which she can put on board a prize. She uses no effective means of discriminating between a neutral and an enemy vessel. She does not receive on board for safety the crew of the vessel she sinks. Her methods of warfare are therefore entirely outside the scope of any of the international instruments regulating operations against commerce in time of war. The German declaration substitutes indiscriminate destruction for regulated capture.

Germany is adopting these methods against peaceful traders and non-combatant crews with the avowed object of preventing commodities of all kinds (including food for the civil population) from reaching or leaving the British Isles or Northern France. Her opponents are, therefore, driven to frame retaliatory measures in order in their turn to prevent commodities of any kind from reaching or leaving Germany. These measures will, however, be enforced by the British and French Governments without risk to neutral ships or to neutral or non-combatant life, and in strict observance of the dictates of humanity.

The British and French Governments will therefore hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin. It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation.

The treatment of vessels and cargoes which have sailed before this date will not be affected.

March 1, 1915.

Nr. 1922. Amerikanischer Kongreßbeschluß vom 4. März 1915 hinsichtlich der Aufrechterhaltung der Neutralität.

(**E. W. 2,** S. 20.)

Joint Resolution To empower the President to better enforce and maintain the neutrality of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than $ 2000 nor more than $ 10 000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915.

Nr. 1923. Anweisung des Staatsdepartements in Washington vom 5. März 1915 an den amerikanischen Botschafter in London hinsichtlich einer Anfrage über die Tragweite der in Aussicht genommenen Vergeltungsmaßnahmen Englands.

(**E. W. 1,** S. 62—63.)

The Secretary of State to Ambassador *Page*.

(Telegram.) Department of State, Washington, March 5, 1915.

In regard to the recent communications received from the British and French Governments concerning restraints upon commerce with Germany, please communicate with the British foreign office in the sense following:

The difficulty of determining action upon the British and French declarations of intended retaliation upon commerce with Germany lies in the nature of the proposed measures in their relation to commerce by neutrals.

While it appears that the intention is to interfere with and take into custody all ships both outgoing and incoming, trading with Germany, which is in effect a blockade of German ports, the rule of blockade, that a ship attempting to enter or leave a German port regardless of the character of its cargo may be condemned, is not asserted.

The language of the declaration is „the British and French Governments will, therefore, hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin. It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation".

The first sentence claims a right pertaining only to a state of blockade. The last sentence proposes a treatment of ships and cargoes as if no blockade existed. The two together present a proposed course of action previously unknown to international law.

As a consequence neutrals have no standard by which to measure their rights or to avoid danger to their ships and cargoes. The paradoxical situation thus created should be changed and the declaring powers ought to assert whether they rely upon the rules governing a blockade or the rules applicable when no blockade exists.

The declaration presents other perplexities.

The last sentence quoted indicates that the rules of contraband are to be applied to cargoes detained. The rule covering noncontraband articles carried in neutral bottoms is that the cargoes shall be released and the ships allowed to proceed. This rule can not, under the first sentence quoted,

be applied as to destinatian. What then is to be done with a cargo of noncontraband goods detained under the declaration? The same question may be asked as to conditional contraband cargoes.

The foregoing comments apply to cargoes destined for Germany. Cargoes coming out of German ports present another problem under the terms of the declaration. Under the rules governing enemy exports only goods owned by enemy subjects in enemy bottoms are subject to seizure and condemnation. Yet by the declaration it is purposed to seize and take into port all goods of enemy „ownership and origin“. The word „origin“ is particularly significant. The origin of goods destined to neutral territory on neutral ships is not and never has been a ground for forfeiture except in case a blockade is declared and maintained. What then would the seizure amount to in the present case except to delay the delivery of the goods? The declaration does not indicate what disposition would be made of such cargoes if owned by a neutral or if owned by an enemy subject. Would a different rule be applied according to ownership? If so, upon what principles of international law would it rest? And upon what rule if no blockade is declared and maintained could the cargo of a neutral ship sailing out of a German port be condemned? If it is not condemned, what other legal course is there but to release it?

While this Government is fully alive to the possibility that the methods of modern naval warfare, particularly in the use of the submarine for both defensive and offensive operations, may make the former means of maintaining a blockade a physical impossibility, it feels that it can be urged with great force that there should be also some limit to „the radius of activity“, and especially so if this action by the belligerents can be construed to be a blockade. It would certainly create a serious state of affairs if, for example, an American vessel laden with a cargo of German origin should escape the British patrol in European waters only to be held up by a cruiser off New York and taken into Halifax.

Similar cablegram sent to Paris. *Bryan.*

Nr. 1924. Amerikanische Note vom 8. März 1915 an England.

(**Misc. 6 [1915]**, S. 23—24.)

Mr. *Page* to Sir *Edward Grey.* — (Received March 9.)

American Embassy, London, March 8, 1915.

Sir,

With regard to the recent communications received by my Government from His Britannic Majesty's Government and that of France concerning restraints upon commerce with Germany, I have received instructions to address to you certain enquiries with a view to a more complete elucidation of the situation which has arisen from the action contemplated by the Governments of the two allied countries.

My Government finds itself in some difficulty in determining its attitude towards the British and French declarations of intended retaliation upon commerce with Germany by reason of the nature of the proposed measures in their relation to the commerce of neutral countries.

While it appears that the intention is to interfere with and take into custody all ships, both outgoing and incoming, engaged in trade with Germany, which, in effect, seems to constitute a blockade of German ports, there is no assertion of the rule of blockade permitting the condemnation, regardless of the character of its cargo, of any ship which attempts to enter or leave a German port. In the language of the declaration — „The British

and French Governments will therefore hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin. It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation."

The former sentence above quoted claims a right pertaining only to a state of blockade, while the latter sentence proposes a treatment of ships and cargoes as if no blockade existed. The two together present a proposed course of action previously unknown to international law, and neutrals have in consequence no standard by which to measure their rights or to avoid danger to their ships and cargoes. It seems to the Government of the United States that the paradoxical situation thus created should be altered, and that the declaring Powers ought to make a definite assertion as to whether they rely upon the rules governig a blockade, or the rules applicable when no blockade exists.

The declaration presents other perplexities. The latter of the two sentences above quoted indicates that the rules of contraband are to be applied to cargoes detained. The existing rule covering non-contraband articles carried in neutral bottoms is that the cargoes be released and the ships allowed to proceed. This rule cannot, under the other sentence quoted, be applied as to destination, and the question then arises as to what is to be done with a cargo of non-contraband goods which might be detained under the declaration. The same question may be asked as to cargoes of conditional contraband.

The foregoing comments apply to cargoes destined for German ports. Cargoes issuing from them present another problem under the terms of the declaration.

Pursuant to the rules governing enemy exports, the only goods subject to seizure and condemnation are those owned by enemy subjects carried in enemy bottoms, and yet under the declaration it is proposed to seize and take into port all goods of enemy „ownership and origin". A particular significance attaches to the word „origin". The origin of goods in neutral ships destined to neutral territory is not and never has been a ground for forfeiture except in cases where a blockade is declared and not maintained. To what then would the seizure under the present declaration amount except to delay the delivery of the goods? The declaration does not indicate what disposition would be made of such cargoes owned by a neutral; and another question arises in the case of enemy ownership as to what rule should then come into play. If another rule is to be applied, upon what principles of international law would it rest, and upon what rule, if no blockade is declared and maintained, could the cargo of a neutral ship issuing from a German port be condemned? If it is not to be condemned, what legal course exists but to release it?

My Government is fully alive to the possibility that the methods of modern naval warfare, particularly in the use of the submarine for both defensive and offensive operations, may make the former means of maintaining a blockade a physical impossibility; but it nevertheless feels that the point of the desirability of limiting „the radius of activity" can be urged with great force, especially so if this action by the belligerents can be construed to be a blockade. A very complicated situation would undoubtedly be created if, for example, an American vessel laden with cargo of German origin should escape the British patrol in European waters only to be held up by a cruiser off New York and taken into Halifax.

I have the honour to add, for your information, that a communication similar to the above has been addressed to the Government of the French Republic.

I have, &c. *Walter Hines Page.*

Nr. 1925. Britische Order in Council vom 11. März 1915.
(The London Gazette vom 16. März 1915.)

At the Court at Buckingham Palace, the 11th day of March 1915.

Present,
The King's Most Excellent Majesty in Council.

Whereas the German Government has issued certain Orders which, in violation of the usages of war, purport to declare the waters surroundig the United Kingdom a military area, in which all British and allied merchant vessels will be destroyed irrespective of the safety of the lives of passengers and crew, and in which neutral shipping will be exposed to similar danger in view of the uncertainties of naval warfare;

And whereas in a memorandum accompanying the said Orders neutrals are warned against entrusting crews, passengers, or goods to British or allied ships;

And whereas such attempts on the part of the enemy give to His Majesty an unquestionable right of retaliation;

And whereas His Majesty has therefore decided to adopt further measures in order to prevent commodities of any kind from reaching or leaving Germany, though such measures will be enforced without risk to neutral ships or to neutral or non-combatant life, and in strict observance of the dictates of humanity;

And whereas the Allies of His Majesty are associated with Him in the steps now to be announced for restricting further the commerce of Germany:

His Majesty is therefore pleased, by and with the advice of His Privy Council, to order and it is hereby ordered as follows: —

I. No merchant vessel which sailed from her port of departure after the 1 st March, 1915, shall be allowed to proceed on her voyage to any German port.

Unless the vessel receives a pass enabling her to proceed to some neutral or allied port to be named in the pass, goods on board any such vessel must be discharged in a British port and placed in the custody of the Marshal of the Prize Court. Goods so discharged, not being contraband of war, shall, if not requisitioned for the use of His Majesty, be restored by order of the Court, upon such terms as the Court may in the circumstances deem to be just, to the person entitled thereto.

II. No merchant vessel which sailed from any German port after the 1st March, 1915, shall be allowed to proceed on her voyage with any goods on board laden at such port.

All goods laden at such port must be discharged in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the Marshal of the Prize Court, and, if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods so sold shall be paid into Court and dealt with in such manner as the Court may in the circumstances deem to be just.

Provided that no proceeds of the sale of such goods shall be paid out of Court until the conclusion of peace, except on the application of the proper Officer of the Crown, unless it be shown that the goods had become neutral property before the issue of this Order.

Provided also, that nothing herein shall prevent the release of neutral property laden at such enemy port on the application of the proper Officer of the Crown.

III. Every merchant vessel which sailed from her port of departure after the 1 st of March, 1915, on her way to a port other than a German port, carrying goods with an enemy destination, or which are enemy property, may be required to discharge such goods in a British or allied port. Any goods so discharged in a British port shall be placed in the custody of the Marshal of the Prize Court, and, unless they are contraband of war, shall, if not requisitioned for the use of His Majesty, be restored by order of the Court, upon such terms as the Court may in the circumstances deem to be just, to the person entitled thereto.

Provided, that this Article shall not apply in any case falling within Articles II. or IV. of this Order.

IV. Every merchant vessel which sailed from a port other than a German port after the 1 st of march, 1915, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the Marshal of the Prize Court, and, if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods so sold shall be paid into Court and dealt with in such manner as the Court may in the circumstances deem to be just.

Provided that no proceeds of sale of such goods shall be paid out of Court until the conclusion of peace except on the application of the proper Officer of the Crown, unless it be shown that the goods had become neutral property before the issue of this Order.

Provided also that nothing herein shall prevent the release of neutral property of enemy origin on the application of the proper Officer of the Crown.

V. — (1) Any person claiming to be interested in, or to have any claim in respect of, any goods (not being contraband of war) placed in the custody of the Marshal of the Prize Court under this Order, or in the proceeds of such goods, may forthwith issue a writ in the Prize Court against the proper Officer of the Crown and apply for an order that the goods should be restored to him, or that their proceeds should be paid to him, or for such other order as the circumstances of the case may require.

(2) The practice and procedure of the Prize Court shall, so far as applicable, be followed mutatis mutandis in any proceedings consequential upon this Order.

VI. A merchant vessel which has cleared for a neutral port from a British or allied port, or which has been allowed to pass having an ostensible destination to a neutral port, and proceeds to an enemy port, shall, if captured on any subsequent voyage, be liable to condemnation.

VII. Nothing in this Order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this Order.

VIII. Nothing in this Order shall prevent the relaxation of the provisions of this Order in respect of the merchant vessels of any country which declares that no commerce intended for or originating in Germany or belonging to German subjects shall enjoy the protection of its flag.

Almeric FitzRoy.

Nr. 1926. Telegramm vom 15. März 1915 des amerikanischen Botschafters in London an das Staatsdepartement in Washington mit der englischen Antwortnote vom 15. März 1915 auf die Anfrage über die Tragweite der in Aussicht genommenen Vergeltungsmaßnahmen sowie dem Text der Order in Council vom 11. März 1915.

(**E. W. 1**, S. 65.)

Ambassador *W. H. Page* to the Secretary of State.

(Telegram.) American Embassy, London, March 15, 1915.

Following is the full text of a note, dated to-day, and an order in council I have just received from *Grey:*

„1. His Majesty's Government have had under careful consideration the inquiries which, under instructions from your Government, Your Excellency addressed to me on the eighth instant regarding the scope and mode of application of the measures, foreshadowed in the British and French declarations of the first of March, for restricting the trade of Germany. Your Excellency explained and illustrated by reference to certain contingencies the difficulty of the United States Government in adopting a definite attitude toward these measures by reason of uncertainty regarding their bearing upon the commerce of neutral countries.

2. I can at once assure Your Excellency that subject to the paramount necessity of restricting German trade His Majesty's Government have made it their first aim to minimize inconvenience to neutral commerce. From the accompanying copy of the order in council, which is to be published to-day, you will observe that a wide discretion is afforded to the prize court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the prize court under the order. I apprehend that the perplexities to which Your Excellency refers will for the most part be dissipated by the perusal of this document and that it is only necessary for me to add certain explanatory observations.

3. The effect of the order in council is to confer certain powers upon the executive officers of His Majesty's Government. The extent to which those powers will be actually exercised and the degree of severity with which the measures of blockade authorized will be put into operation, are matters which will depend on the administrative orders issued by the Government and the decisions of the authorities specially charged with the duty of dealing with individual ships and cargoes, according to the merits of each case. The United States Government may rest assured that the instructions to be issued by His Majesty's Government to the fleet and to the customs officials and executive committees concerned will impress upon them the duty of acting with the utmost dispatch consistent with the object in view and of showing in every case such consideration for neutrals as may be compatible with that object which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or coming from Germany.

4. His Majesty's Government have felt most reluctant at the moment of initiating a policy of blockade to exact from neutral ships all the penalties attaching to a breach of blockade. In their desire to alleviate the burden which the existence of a state of war at sea must inevitably impose on neutral sea-borne commerce, they declare their intention to refrain altogether from the exercise of the right to confiscate ships or cargoes which belligerents

have always claimed in respect of breaches of blockade. They restrict their claim to the stopping of cargoes destined for or coming from the enemy's territory.

5. As regards cotton, full particulars of the arrangements contemplated have already been explained. It will be admitted that every possible regard has been had to the legitimate interests of the American cotton trade.

6. Finally, in reply to the penultimate paragraph of Your Excellency's note, I have the honour to state that it is not intended to interfere with neutral vessels carrying enemy cargo of noncontraband nature outside European waters, including the Mediterranean."

Nr. 1927. Deutsche Verbalnote vom 16. März 1915 an Amerika über die Behandlung der in England gefangen gehaltenen Besatzungen deutscher Unterseeboote. (Norddeutsche Allgemeine Zeitung Nr. 102, Zweite Ausgabe vom 13. April 1915.)

Berlin, den 16. März 1915.

Nach Meldungen der englischen Presse soll die britische Admiralität die Absicht kundgegeben haben, den in Gefangenschaft geratenen Offizieren und Mannschaften der deutschen Unterseeboote nicht die ihnen als Kriegsgefangenen gebührende Behandlung zuteil werden zu lassen, insbesondere den Offizieren nicht die Vorzüge ihres Dienstgrades zuzubilligen. Die deutsche Regierung ist der Ansicht, daß diese Nachrichten nicht zutreffen, da die Besatzungen der Unterseeboote in Ausführung der ihnen erteilten Befehle gehandelt, mithin lediglich ihre militärischen Pflichten erfüllt haben. Immerhin haben die in Rede stehenden Meldungen auch in der neutralen Presse einen solchen Umfang angenommen, daß eine sofortige Aufklärung des Sachverhalts schon im Hinblick auf die öffentliche Meinung in Deutschland dringend geboten erscheint.

Das Auswärtige Amt bittet daher die Botschaft der Vereinigten Staaten, auf telegraphischem Wege durch Vermittlung der amerikanischen Botschaft in London bei der großbritannischen Regierung anfragen zu lassen, ob und in welcher Weise sie die gefangen genommenen Offiziere und Mannschaften der deutschen Unterseeboote irgendwie schlechter als andere Kriegsgefangene zu behandeln gedenkt. Sollte dies der Fall sein, so wird die weitere Bitte ausgesprochen, im Namen der deutschen Regierung gegen ein derartiges Verfahren bei der britischen Regierung den schärfsten Protest einzulegen und ihr keinen Zweifel darüber zu lassen, daß für jedes in britische Gefangenschaft geratene Mitglied der deutschen Unterseebootsbesatzungen ein in Kriegsgefangenschaft befindlicher englischer Armeeoffizier eine entsprechend schlechte Behandlung erfahren wird.

Für eine tunlichst baldige Mitteilung über das Ergebnis der unternommenen Schritte würde das Auswärtige Amt dankbar sein.

Nr. 1928. Anweisung des Staatsdepartements in Washington vom 30. März 1915 an den amerikanischen Botschafter in London zur Beantwortung der britischen Denkschrift vom 13. März und der britischen Note vom 15. März 1915.

(**E. W. 1,** S. 69—72.)

(Telegram.) Department of State, Washington, March 30, 1915.

You are instructed to deliver the following to His Majesty's Government in reply to your numbers 1795 and 1798 of March 15:

The Government of the United States has given careful consideration to the subjects treated in the British notes of March 13 and March 15, and to the British Order in Council of the latter date.

These communications contain matters of grave importance to neutral nations. They appear to menace their rights of trade and intercourse not only with belligerents but also with one another. They call for frank comment in order that misunderstandings may be avoided. The Government of the United States deems it its duty, therefore, speaking in the sincerest spirit of friendship, to make its own view and position with regard to them unmistakably clear.

The Order in Council of the 15th of March would constitute, were its provisions to be actually carried into effect as they stand, a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations now at peace.

This Government takes it for granted that there can be no question what those rights are. A nation's sovereignty over its own ships and citizens under its own flag on the high seas in time of peace is, of course, unlimited; and that sovereignty suffers no dominution in time of war, except in so far as the practice and consent of civilized nations has limited it by the recognition of certain now clearly determined rights, which it is conceded may be exercised by nations which are at war.

A belligerent nation has been conceded the right of visit and search, and the right of capture and condemnation, if upon examination a neutral vessel is found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy's government or armed forces. It has been conceded the right to establish and maintain a blockade of an enemy's ports and coasts and to capture and condemn any vessel taken in trying to break the blockade. It is even conceded the right to detain and take to its own ports for judicial examination all vessels which it suspects for substantial reasons to be engaged in unneutral or contraband service and to condemn them if the suspicion is sustained. But such rights, long clearly defined both in doctrine and practice, have hitherto been held to be the only permissible exceptions to the principle of universal equality of sovereignty on the high seas as between belligerents and nations not engaged in war.

It is confidently assumed that His Majesty's Gevernment will not deny that it is a rule sanctioned by general practice that, even though a blockade should exist and the doctrine of contraband as to unblockaded territory be rigidly enforced, innocent shipments may be freely transported to and from the United States through neutral countries to belligerent territory without being subject to the penalties of contraband traffic or breach of blockade, much less to detention, requisition, or confiscation.

Moreover the rules of the Declaration of Paris of 1856 — among them that free ships make free goods — will hardly at this day be disputed by the signatories of that solemn agreement.

His Majesty's Government, like the Government of the United States, have often and explicitly held that these rights represent the best usage of warfare in the dealings of belligerents with neutrals at sea. In this connection I desire to direct attention to the opinion of the Chief Justice of the United States in the case of the Peterhof, which arose out of the Civil War, and to the fact that that opinion was unanimously sustained in the award of the Arbitration Commission of 1871, to which the case was presented at the request of Great Britain. From that time to the Declaration of London of 1909, adopted with modifications by the Order in Council of the

23rd of October last, these rights have not been seriously questioned by the British Government. And no claim on the part of Great Britain of any justification for interfering with these clear rights of the United States and its citizens as neutrals could be admitted. To admit it would be to assume an attitude of unneutrality toward the present enemies of Great Britain which would be obviously inconsistent with the solemn obligations of this Government in the present circumstances; and for Great Britain to make such a claim would be for her to abandon and set at naught the principles for which she has consistently and earnestly contended in other times and circumstances.

The note of His Majesty's Principal Secretary of State for Foreign Affairs which accompanies in Order in Council, and which bears the same date, notifies the Government of the United United States of the establishment of a blockade which is, if defined by the terms of the Order in Council, to include all the coasts and ports of Germany and every port of possible access to enemy territory. But the novel and quite unprecedented feature of that blockade, if we are to assume it to be properly so defined, is that it embraces many neutral ports and coasts, bars access to them, and subjects all neutral ships seeking to approach them to the same suspicion that would attach to them were they bound for the ports of the enemies of Great Britain, and to unusual risks and penalties.

It is manifest that such limitations, risks, and liabilities placed upon the ships of a neutral power on the high seas, beyond the right of visit and search and the right to prevent the shipment of contraband already referred to, are a distinct invasion of the sovereign rights of the nation whose ships, trade, or commerce is interfered with.

The Government of the United States is, of course, not oblivious to the great changes which have occurred in the conditions and means of naval warfare since the rules hitherto governing legal blockade were formulated. It might be ready to admit that the old form of „close" blockade with its cordon of ships in the immediate offing of the blockaded ports is no longer practicable in face of an enemy possessing the means and opportunity to make an effective defense by the use of submarines, mines, and air craft; but it can hardly be maintained that, whatever form of effective blockade may be made use of, it is impossible to conform at least to the spirit and principles of the established rules of war. If the necessities of the case should seem to render it imperative that the cordon of blockading vessels be extended across the approaches to any neighbouring neutral port or country, it would seem clear that it would still be easily practicable to comply with the well-recognized and reasonable prohibition of international law against the blockading of neutral ports by according free admission and exit to all lawful traffic with neutral ports through the blockading cordon. This traffic would of course include all outward-bound traffic from the neutral country and all inward-bound traffic to the neutral country except contraband in transit to the enemy. Such procedure need not conflict in any respect with the rights of the belligerent maintaining the blockade since the right would remain with the blockading vessels to visit and search all ships either entering or leaving the neutral territory which they were in fact, but not of right, investing.

The Government of the United States notes that in the Order in Council His Majesty's Government give as their reason for entering upon a course of action, which they are aware is without precedent in modern warfare, the necessity they conceive themselves to have been placed under to retaliate upon their enemies for measures of a similar nature which the latter have announced it their intention to adopt and which they have to

some extend adopted; but the Government of the United States, recalling the principles upon which His Majesty's Government have hitherto been scrupulous to act, interprets this as merely a reason for certain extraordinary activities on the part of His Majesty's naval forces and not as an excuse for or prelude to any unlawful action. If the course pursued by the present enemies of Great Britain should prove to be in fact tainted by illegality and disregard of the principles of war sanctioned by enlightened nations, it can not be supposed, and this Government does not for a moment suppose, that His Majesty's Government would wish the same taint to attach to their own actions or would cite such illegal acts in any sense or degree a justification for similar practices on their part in so far as they affect neutral rights.

It is thus that the Government of the United States interprets the language of the note of His Majesty's Principal Secretary of State for Foreign Affairs which accompanies the copy of the Order in Council which was handed to the Ambassador of the United States near the Government in London and by him transmitted to Washington.

This Government notes with gratification that „wide discretion is afforded to the prize court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just, and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the prize court under the order"; that „the effect of the Order in Council is to confer certain powers upon the executive officers of His Majesty's Government"; and that „the extent to which these powers will be actually exercised and the degree of severity with which the measures of blockade authorized will be put into operation are matters which will depend on the administrative orders issued by the Government and the decisions of the authorities especially charged with the duty of dealing with individual ships and cargoes according to the merits of each case". This Government further notes with equal satisfaction the declaration of the British Government that „the instructions to be issued by His Majesty's Government to the fleet and to the customs officials and executive committees concerned will impress upon them the duty of acting with the utmost dispatch consistent with the object in view, and of showing in every case such consideration for neutrals as may be compatible with that object, which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or coming from Germany".

In view of these assurances formally given to this Government, it is confidently expected that the extensive powers conferred by the Order in Council on the executive officers of the Crown will be restricted by „orders issued by the Government" directing the exercise of their discretionary powers in such a manner as to modify in practical application those provisions of the Order in Council which, if strictly enforced, would violate neutral rights and interrupt legitimate trade. Relying on the faithful performance of these voluntary assurances by His Majesty's Government the United States takes it for granted that the approach of American merchantmen to neutral ports situated upon the long line of coast affected by the Order in Council will not be interfered with when it is known that they do not carry goods which are contraband of war or goods destined to or proceeding from ports within the belligerent territory affected.

The Government of the United States assumes with the greater confidence that His Majesty's Government will thus adjust their practice to the recognized rules of international law, because it is manifest that the British Government have adopted an extraordinary method of „stopping cargoes destined for or coming from the enemy's territory", which, owing to the existence of unusual conditions in modern warfare at sea, it will be difficult

to restrict to the limits which have been heretofore required by the law of nations. Though the area of operations is confined to „European waters including the Mediterranean“, so great an area of the high seas is covered and the cordon of ships is so distant from the territory affected that neutral vessels must necessarily pass through the blockading force in order to reach important neutral ports which Great Britain as a belligerent has not the legal right to blockade and which, therefore, it is presumed she has no intention of claiming to blockade. The Scandinavian and Danish ports, for example, are open to American trade. They are also free, so far as the actual enforcement of the Order in Council is concerned, to carry on trade with German Baltic ports although it is an essential element of blockade that it bear with equal severity upon all neutrals.

This Government, therefore, infers that the commanders of His Majesty's ships of war engaged in maintaining the so-called blockade will be instructed to avoid an enforcement of the proposed measures of nonintercourse in such a way as to impose restrictions upon neutral trade more burdensome than those which have been regarded as inevitable when the ports of a belligerent are actually blockaded by the ships of its enemy.

The possibilities of serious interruption of American trade under the Order in Council are so many, and the methods proposed are so unusual and seem liable to constitute so great an impediment and embarrassment to neutral commerce that the Government of the United States, if the Order in Council is strictly enforced, apprehends many interferences with its legitimate trade which will impose upon His Majesty's Government heavy responsibilities for acts of the British authorities clearly subversive of the rights of neutral nations on the high seas. It is, therefore, expected that His Majesty's Government, having considered these possibilities, will take the steps necessary to avoid them, and, in the event that they should unhappily occur, will be prepared to make full reparation for every act which under the rules of international law constitutes a violation of neutral rights.

As stated in its communication of October 22, 1914, „this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States, irrespective of the provisions of the Declaration of London, and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with, by the authorities of the British Government“.

In conclusion you will reiterate to His Majesty's Government that this statement of the views of the Government of the United States is made in the most friendly spirit, and in accordance with the uniform candor which has characterized the relations of the two Governments in the past, and which has been in large measure the foundation of the peace and amity existing between the two nations without interruption for a century.

Bryan.

Nr. 1929. Anweisung des Staatssekretärs Bryan an den amerikanischen Botschafter in Berlin vom 31. März 1915 hinsichtlich der Versenkung des amerikanischen Segelschiffes „William P. Frye“.

(**E. W. 1,** S. 87.)

(Telegram.) Department of State, Washington, March 31, 1915.

You are instructed to present the following note to the German Foreign Office:

Under instructions from my Government I have the honor to present a claim for $ 228 059.54, with interest from January 28, 1915, against the German Government on behalf of the owners and captain of the American sailing vessel „William P. Frye“ for damages suffered by them on account of the destruction of that vessel on the high seas by the German armed cruiser „Prinz Eitel Friedrich“, on January 28, 1915.

The facts upon which this claim arises and by reason of which the German Government is held responsible by the Government of the United States for the attendant loss and damages are briefly as follows:

The „William P. Frye“, a steel sailing vessel of 3374 tons gross tonnage, owned by American citizens and sailing under the United States flag and register, cleared from Seattle, Wash., November 4, 1914, under charter to *M. H. Houser*, of Portland, Oreg., bound for Queenstown, Falmouth, or Plymouth for orders, with a cargo consisting solely of 186 950 bushels of wheat owned by the aforesaid *Houser* and consigned „unto order or to its assigns“, all of which appears from the ship's papers which were taken from the vessel at the time of her destruction by the commander of the German cruiser.

On January 27, 1915, the „Prinz Eitel Friedrich“ encountered the „Frye“ on the high seas, compelled her to stop, and sent on board an armed boarding party, who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel, and on the following morning, by his order, the „Frye“ was sunk.

The claim of the owners and captain consists of the following items:

Value of ship, equipment, and outfit	$ 150 000.00
Actual freight as per freight list, 5034 1000/2240 tons at 32-6 — £ 8180-19-6 at $ 4.86	39 759.54
Traveling and other expenses of Capt. *Kiehne* and *Arthur Sewall & Co.,* agents of ship, in connection with making affidavits, preparing and filing claim	500.00
Personal effects of Capt. *H. H. Kiehne*	300.00
Damages covering loss due to deprivation of use of ship	37 500.00
Total	228 059.54

By direction of my Government, I have the honor to request that full reparation be made by the German Government for the destruction of the „William P. Frye“ by the German cruiser „Prinz Eitel Friedrich“.

Bryan.

Nr. 1930. Deutsche Antwortnote vom 4. April 1915 an Amerika auf die amerikanische Note vom 3. April 1915. (Norddeutsche Allgemeine Zeitung Nr. 102, Erste Ausgabe vom 13. April 1915.)

Berlin, den 4. April 1915.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika Herrn *James W. Gerard* auf das Schreiben vom 3. d. M. Nr. F.O. 2892, betreffend Schadensersatzansprüche wegen Versenkung des amerikanischen Kauffahrteischiffes „William P. Frye“ durch den deutschen Hilfskreuzer „Prinz Eitel Friedrich“, nachstehendes zu erwidern:

Nach den der deutschen Regierung zugegangenen Berichten hat der Kommandant des „Prinz Eitel Friedrich“ das Schiff „William P. Frye“ am 27. Januar d. J. auf hoher See angehalten und untersucht. An Bord fand er eine an Order gerichtete, nach Queenstown, Falmouth oder Plymouth be-

stimmte Weizenladung. Nachdem er zunächst versucht hatte, die Ladung aus dem „William P. Frye“ zu entfernen, nahm er schließlich die Papiere und die Besatzung an Bord und versenkte das Schiff.

Aus diesem Tatbestand ergibt sich, daß der deutsche Kommandant sich völlig im Rahmen der Grundsätze des Völkerrechts gehalten hat, wie sie in der Londoner Seekriegsrechtserklärung und in der deutschen Prisenordnung niedergelegt sind. Die Häfen von Queenstown, Falmouth und Plymouth, wohin das angehaltene Schiff bestimmt war, sind stark befestigte englische Küstenplätze, die überdies den britischen Seestreitkräften als Stützpunkt dienen. Die Weizenladung, die gemäß Art. 24 Nr. 1 der Londoner Erklärung, Ziff. 23 Nr. 1 der deutschen Prisenordnung als Lebensmittel unter den Begriff der relativen Konterbande fiel, war daher nach Art. 33, 34 der Londoner Erklärung, Ziff. 32, 33 der deutschen Prisenordnung, als für die feindliche Streitmacht bestimmt anzusehen und bis zum Beweise des Gegenteils als Konterbande zu behandeln; dieser Gegenbeweis war jedenfalls bei der Anhaltung des Schiffes nicht zu führen, da die Ladungspapiere an Order lauteten. Damit war aber auch gemäß Art. 49 der Londoner Erklärung, Ziff. 113 der deutschen Prisenordnung, die Voraussetzung für die Versenkung des Schiffes gegeben, da für den Hilfskreuzer die Möglichkeit fehlte, die Prise ohne Gefährdung seiner Sicherheit und ohne Beeinträchtigung des Erfolges seiner Operationen in einen deutschen Hafen einzubringen. Die ihm nach Art. 50 der Londoner Erklärung, Ziff. 116 der deutschen Prisenordnung, vor der Zerstörung obliegenden Pflichten hat er erfüllt, indem er die an Bord befindlichen Personen und die Schiffspapiere auf den Kreuzer herübergenommen hat.

Die Rechtmäßigkeit der Maßnahmen des deutschen Kommandanten ist übrigens gemäß Art. 51 der Londoner Erklärung, § 1 Nr. 2 der deutschen Prisengerichtsordnung, durch die deutsche Prisengerichtsbarkeit nachzuprüfen. Dieses Prisenverfahren wird nach Eingang der Schiffspapiere unverzüglich vor dem Prisengericht in Hamburg eröffnet werden und sich auf die Entscheidung der Fragen erstrecken, ob die Zerstörung der Ladung und des Schiffes im Sinne des Art. 49 der Londoner Erklärung notwendig war, ob das untergegangene Eigentum der Wegnahme unterlag, sowie gegebenenfalls ob und in welcher Höhe den Eigentümern Schadenersatz zu leisten ist. In dem Verfahren würde den Eigentümern von Schiff und Ladung gemäß Art. 34 Abs. 3 der Londoner Erklärung der Beweis offenstehen, daß die Weizenladung eine friedliche Bestimmung und somit nicht den Charakter der Konterbande hatte. Wird dieser Beweis nicht geführt, so wäre nach allgemeinen völkerrechtlichen Grundsätzen die deutsche Regierung zu einer Entschädigung überhaupt nicht verpflichtet.

Nach den für die Beziehungen zwischen Deutschland und den Vereinigten Staaten von Amerika geltenden besonderen Bestimmungen ist indes die Rechtslage insofern eine andere, als nach Art. 13 des preußisch-amerikanischen Freundschafts- und Handelsvertrags vom 11. Juli 1799 in Verbindung mit Artikel 12 des preußisch-amerikanischen Handels- und Schiffahrtsvertrags vom 1. Mai 1828 Konterbande, die einem Angehörigen des einen Teiles gehört, von dem anderen Teile nicht eingezogen, sondern nur zurückgehalten oder gegen Zahlung des Wertes übernommen werden kann. Auf Grund dieser Vertragsbestimmung, die selbstverständlich für das deutsche Prisengericht maßgebend ist, würden die amerikanischen Eigentümer von Schiff und Ladung auch dann eine Entschädigung erhalten, wenn das Gericht die Weizenladung als Konterbande erklären würde. Gleichwohl erübrigt sich nicht etwa das bevorstehende Prisenverfahren, da das zuständige Prisengericht die Rechtmäßigkeit der Wegnahme und der Versenkung nachzuprüfen hat, auch die Legitimation der Reklamanten und die Höhe des Schadenersatzes feststellen würde.

Indem der Unterzeichnete dem Herrn Botschafter anheimstellen darf, vorstehendes zur Kenntnis seiner Regierung zu bringen, benutzt er diesen Anlaß, um ihm die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern. *v. Jagow.*

Nr. 1931. Deutsche Denkschrift vom 4. April 1915 an Amerika über den deutsch-amerikanischen Handel und die Frage der Waffenlieferungen.

(**E. W. 1,** S. 73—74.)

Imperial German Embassy, Washington, April 4, 1915.

Mr. Secretary of State: I have the honor to deliver to Your Excellency the inclosed memorandum on German-American trade and the question of delivery of arms.

Accept, etc. *J. Bernstorff.*

(Inclosure — Translation.)

Memorandum.

Imperial German Embassy, Washington, D.C., April 4, 1915.

The various British Orders in Council have one-sidedly modified the generally recognized principles of international law in a way which arbitrarily stops the commerce of neutral nations with Germany. Even before the last British Order in Council, the shipment of conditional contraband, especially food supplies, to Germany was practically impossible. Prior to the protest sent by the American to the British Government on December 28 last, such a shipment did not actually take place in a single case. Even after this protest the Imperial Embassy knows of only a single case in which an American shipper has ventured to make such a shipment for the purpose of legitimate sale to Germany. Both ship and cargo were immediately seized by the English and are being held in an English port under the pretext of an order of the German Federal Council (Bundesrat) regarding the grain trade, although this resolution of the Federal Council relates exclusively to grain and flour, and not to other foodstuffs, besides making an express exception with respect to imported foodstuffs, and although the German Government gave the American Government an assurance, and proposed a special organization whereby the exclusive consumption by the civilian population is absolutely guaranteed.

Under the circumstances the seizure of the American ship was inadmissible according to recognized principles of international law. Nevertheless the United States Government has not to date secured the release of the ship and cargo, and has not, after a duration of the war of eight months, succeeded in protecting its lawful trade with Germany.

Such a long delay, especially in matters of food supply, is equivalent to an entire denial.

The Imperial Embassy must therefore assume that the United States Government acquiesces in the violations of international law by Great Britain.

Then there is also the attitude of the United States in the question of the exportation of arms. The Imperial Government feels sure that the United States Government will agree that in questions of neutrality it is necessary to take into consideration not only the formal aspect of the case, but also the spirit in which the neutrality is carried out.

The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question whether war material should be supplied to the belligerents, but who should supply it in competition with other nations. In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law. In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protecting the existing industries of neutral nations as far as possible from injury in their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as in the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent powers.

This industry is actually delivering goods only to the enemies of Germany. The theoretical willingness to supply Germany also if shipments thither were possible, does not alter the case. If it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supply of arms or at least of utilizing it to protect legitimate trade with Germany, especially that in foodstuffs. This view of neutrality should all the more appeal to the United States Government because the latter enacted a similar policy toward Mexico. On February 4, 1914, President *Wilson,* according to a statement of a Representative in Congress in the Committee for Foreign Affairs of December 30, 1914, upon the lifting of the embargo on arms to Mexico, declared that „we should stand for genuine neutrality, considering the surrounding facts of the case ***.“ He then held that „in that case, because *Carranza* had no ports, while *Huerta* had them and was able to import these materials, that it was our duty as a nation to treat (*Carranza* and *Huerta*) upon an equality if we wished to observe the true spirit of neutrality as compared with a mere paper neutrality.“

If this view were applied to the present case, it would lead to an embargo on the exportation of arms.

Nr. 1932. Amerikanische Note vom 6. April 1915 an Deutschland. Der amerikanische Botschafter in Berlin an das Auswärtige Amt. (Norddeutsche Allgemeine Zeitung Nr. 102, Zweite Ausgabe vom 13. April 1915.)

(Uebersetzung.)

Berlin, den 6. April 1915.

Mit Beziehung auf die geschätzte Verbalnote vom 16. März 1915, betreffend die Behandlung der in England gefangenen Besatzungen deutscher Unterseeboote, beehrt sich die amerikanische Botschaft, das Kaiserliche Auswärtige Amt zu benachrichtigen, daß die Angelegenheit unverzüglich dem Staatsdepartement in Washington vorgelegt worden ist, und teilt im nach-

stehenden dem Kaiserlichen Auswärtigen Amte die telegraphisch aus Washington eingegangene Antwort der britischen Regierung im Wortlaut mit.

„Der Staatssekretär für auswärtige Angelegenheiten übermittelt dem Botschafter der Vereinigten Staaten seine Empfehlungen und beehrt sich mit Beziehung auf die Note Seiner Exzellenz vom 20. v. M., betreffend die Zeitungsberichte über die Behandlung der deutschen Unterseebootsgefangenen, mitzuteilen, daß nach einer Auskunft der *Lords Commissioners* der Admiralität die geretteten Offiziere und Mannschaften der deutschen Unterseeboote „U 8“ und „U 12“ mit Rücksicht auf die Notwendigkeit ihrer Absonderung von anderen Kriegsgefangenen in die Marinearrestanstalten *(Naval Detention Barracks)* verbracht worden sind. In diesen Quartieren werden sie menschlich behandelt, erhalten Gelegenheit zu körperlicher Bewegung, sind mit deutschen Büchern versehen, werden zu keinen Zwangsarbeiten herangezogen und werden besser ernährt und gekleidet als britische Gefangene von gleichem Range in Deutschland. Da sich indes die Besatzungen der beiden in Rede stehenden deutschen Unterseeboote, bevor sie aus der See gerettet wurden, damit befaßten, unschuldige britische und neutrale Handelsschiffe zu versenken und leichtfertig Nichtkämpfer zu töten, sind sie nicht als ehrenhafte Gegner anzusehen, sondern eher als Leute, die auf Befehl ihrer Regierung Handlungen begangen haben, die Verbrechen gegen das Völkerrecht darstellen und gegen die allgemeine Menschlichkeit verstoßen. Seiner Majestät Regierung möchte auch zur Kenntnis der Regierung der Vereinigten Staaten bringen, daß während des gegenwärtigen Krieges mehr als tausend Offiziere und Mannschaften der deutschen Marine aus der See gerettet worden sind, zuweilen ungeachtet der Gefahr für die Retter und zuweilen zum Schaden britischer Marineoperationen. Es ist dagegen kein Fall vorgekommen, wo irgendein Offizier oder Mann der königlichen Marine von den Deutschen gerettet worden ist.“

Nr. 1933. Deutsche Note vom 11. April 1915 an Amerika. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin. (Norddeutsche Allgemeine Zeitung Nr. 102, Zweite Ausgabe vom 13. April 1915.)

Berlin, den 11. April 1915.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard*, auf die Verbalnote vom 6. d. M. — F. O. Nr. 2928 — über die Behandlung der in England gefangengehaltenen Besatzungen deutscher Unterseeboote nachstehendes mitzuteilen.

Die deutsche Regierung hat mit Befremden und mit Entrüstung davon Kenntnis genommen, daß die britische Regierung die kriegsgefangenen Offiziere und Mannschaften der deutschen Unterseeboote nicht als ehrenhafte Gegner ansieht und sie demgemäß nicht wie andere Kriegsgefangene, sondern wie Arrestanten behandelt. Diese Offiziere und Mannschaften haben als tapfere Männer in Erfüllung ihrer militärischen Pflichten gehandelt und daher vollen Anspruch darauf, in derselben Weise wie andere Kriegsgefangene gemäß den völkerrechtlichen Abmachungen gehalten zu werden. Die deutsche Regierung legt daher gegen das völkerrechtswidrige Vorgehen Englands auf das schärfste Verwahrung ein und sieht sich gleichzeitig zu ihrem Bedauern gezwungen, nunmehr unverzüglich die von ihr angekündigte Vergeltungsmaßnahme auszuführen und eine entsprechende Anzahl kriegsgefangener englischer Armeeoffiziere einer gleich harten Behandlung zu unterwerfen. Wenn übrigens die britische Regierung am Schlusse ihrer Ausführungen bemerken

zu sollen glaubt, daß die deutsche Marine im Gegensatz zur britischen die Rettung von Schiffbrüchigen unterlassen habe, so kann die darin liegende Unterstellung, als ob eine solche Rettung den deutschen Kriegsschiffen möglich gewesen, aber von ihnen geflissentlich unterlassen worden sei, nur mit Abscheu zurückgewiesen werden.

Der Unterzeichnete bittet den Herrn Botschafter, der britischen Regierung eine entsprechende Mitteilung zugehen zu lassen, auch dafür Sorge zu tragen, daß sich ein Mitglied der amerikanischen Botschaft in London alsbald persönlich von der Behandlung der deutschen Unterseebootsgefangenen überzeugt und über alle Einzelheiten ihrer Unterbringung, Verpflegung und Beschäftigung Bericht erstattet. Das weitere Verfahren gegenüber den arrestierten britischen Offizieren, die vorläufig in Offiziershaft genommen werden, würde alsdann der Behandlung der deutschen Gefangenen angepaßt werden.

Indem der Unterzeichnete dem Herrn Botschafter für seine Mühewaltung in dieser peinlichen Angelegenheit seinen verbindlichsten Dank ausspricht, benutzt er usw. *von Jagow.*

Nr. 1934. Amerikanische Antwort vom 21. April 1915 auf die deutsche Denkschrift vom 4. April 1915.

(**E. W. 1,** S. 74—75.)

Department of State, Washington, April 21, 1915.

Excellency: I have given thoughtful consideration to your Excellency's note of the 4th of April, 1915, enclosing a memorandum of the same date, in which Your Excellency discusses the action of this Government with regard to trade between the United States and Germany and the attitude of this Government with regard to the exportation of arms from the United States to the nations now at war with Germany.

I must admit that I am somewhat at a loss how to interpret Your Excellency's treatment of these matters. There are many circumstances connected with these important subjects to which I would have expected Your Excellency to advert, but of which you make no mention, and there are other circumstances to which you do refer which I would have supposed to be hardly appriopriate for discussion between the Government of the United States and the Government of Germany.

I shall take the liberty, therefore, of regarding Your Excellency's references to the course pursued by the Government of the United States with regard to interferences with trade from this country, such as the Government of Great Britain have attempted, as intended merely to illustrate more fully the situation to which you desire to call our attention and not as an invitation to discuss that course. Your Excellency's long experience in international affairs will have suggested to you that the relations of the two Governments with one another can not wisely be made a subject of discussion with a third Government, which can not be fully informed as to the facts and which can not be fully cognizant of the reasons for the course pursued. I believe, however, that I am justified in assuming that what you desire to call forth is a frank statement of the position of this Government in regard to its obligations as a neutral power. The general attitude and course of policy of this Government in the maintenance of its neutrality I am particularly anxious that Your Excellency should see in their true light. I had hoped that this Government's position in these respects had been made abundantly clear, but I am of course perfectly willing to state it again. This seems to me the more necessary and desirable because, I regret to say, the language which Your Excellency employs in your memorandum is susceptible

of being construed as impugning the good faith of the United States in the performance of its duties as a neutral. I take it for granted that no such implication was intended, but it is so evident that Your Excellency is laboring under certain false impressions that I can not be too explicit in setting forth the facts as they are, when fully reviewed and comprehended.

In the first place, this Government has at no time and in no manner yielded any one of its rights as a neutral to any of the present belligerents. It has acknowledged, as a matter of course, the right of visit and search and the right to apply the rules of contraband of war to articles of commerce. It has, indeed, insisted upon the use of visit and search as an absolutely necessary safeguard against mistaking neutral vessels for vessels owned by an enemy and against mistaking legal cargoes for illegal. It has admitted also the right of blockade if actually exercised and effectively maintained. These are merely the well-known limitations which war places upon neutral commerce on the high seas. But nothing beyond these has it conceded. I call Your Excellency's attention to this, notwithstanding it is already known to all the world as a consequence of the publication of our correspondence in regard to these matters with several of the belligerent nations, because I can not assume that you have official cognizance of it.

In the second place, this Government attempted to secure from the German and British Governments mutual concessions with regard to the measures those Governments respectively adopted for the interruption of trade on the high seas. This it did, not of right, but merely as exercising the privileges of a sincere friend of both parties and as indicating its impartial good will. The attempt was unsuccessful; but I regret that Your Excellency did not deem it worthy of mention in modification of the impressions you expressed. We had hoped that this act on our part had shown our spirit in these times of distressing war as our diplomatic correspondence had shown our steadfast refusal to acknowledge the right of any belligerent to alter the accepted rules of war at sea in so far as they affect the rights and interests of neutrals.

In the third place, I note with sincere regret that, in discussing the sale and exportation of arms by citizens of the United States to the enemies of Germany, Your Excellency seems to be under the impression that it was within the choice of the Government of the United States, notwithstanding its professed neutrality and its diligent efforts to maintain it in other particulars, to inhibit this trade, and that its failure to do so manifested an unfair attitude toward Germany. This Government holds, as I believe Your Excellency is aware, and as it is constrained to hold in view of the present indisputable doctrines of accepted international law, that any change in its own laws of neutrality during the progress of a war which would affect unequally the retations of the United States with the nations at war would be an unjustifiable departure from the principles of strict neutrality by which it has consistently sought to direct its actions, and I respectfully submit that none of the circumstances urged in Your Excellency's memorandum alters the principle involved. The placing of an ambargo on the trade in arms at the present time would constitute such a change and be a direct violation of the neutrality of the United States. It will, I feel assured, be clear to Your Excellency that, holding this view an considering itself in honor bound by it, it is out of the question for this Government to consider such a course.

I hope that Your Excellency will realize the spirit in which I am drafting this reply. The friendship between the people of the United States and the people of Germany is so warm and of such long standing, the ties which bind them to one another in amity are so many and so strong, that

this Government feels under a special compulsion to speak with perfect frankness when any occasion arises which seems likely to create any misunderstanding, however slight or temporary, between those who represent the Governments of the two countries. It will be a matter of gratification to me if I have removed from Your Excellency's mind any misapprehension you may have been under regarding either the policy or the spirit and purposes of the Government of the United States. Its neutrality is founded upon the firm basis of conscience and good will.

Accept, etc. *W. J. Bryan.*

Nr. 1935. Anweisung des Staatsdepartements in Washington vom 28. April 1915 an den amerikanischen Botschafter, dem Auswärtigen Amt in Berlin eine Note über den „William P. Frye"-Fall zu überreichen. (Die Note wurde am 30. April 1915 übergeben.)

(**E. W. 1,** S. 88.)

Department of State, Washington, April 28, 1915.

You are instructed to present the following note to the German Foreign Office:

In reply to Your Excellency's note of the 5 th instant, which the Government of the United States understands admits the liability of the Imperial German Government for the damages resulting from the sinking of the American sailing vessel „William P. Frye" by the German auxiliary cruiser „Prinz Eitel Friedrich" on January 28 last, I have the honor to say, by direction of my Government, that while the promptness with which the Imperial German Government has admitted its liability is highly appreciated, my Government feels that it would be inappropriate in the circumstances of this case, and would involve unnecessary delay to adopt the suggestion in your note that the legality of the capture and destruction, the standing of the claimants, and the amount of indemnity should be submitted to a prize court.

Unquestionably the destruction of this vessel was a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia, and the United States Government, by virtue of its treaty rights, has presented to the Imperial German Government a claim for indemnity on account of the resulting damages suffered by American citizens. The liability of the Imperial German Government and the standing of the claimants as American citizens and the amount of indemnity are all questions which lend themselves to diplomatic negotiation between the two Governments, and happily the question of liability has already been settled in that way. The status of the claimants and the amount of the indemnity are the only questions remaining to be settled, and it is appropriate that they should be dealt with in the same way.

The Government of the United States fully understands that, as stated in Your excellency's note, the German Government is liable under the treaty provisions above mentioned for the damages arising from the destruction of the cargo as well as from the destruction of the vessel. But it will be observed that the claim under discussion does not include damages for the destruction of the cargo, and the question of the value of the cargo therefore is not involved in the present discussion.

The Government of the United States recognizes that the German Government will wish to be satisfied as to the American ownership of the

vessel, and the amount of the damages sustained in consequence of her destruction.

These matters are readily ascertainable, and if the German Government desires any further evidence in substantiation of the claim on these points in addition to that furnished by the ship's papers, which are already in the possession of the German Government, any additional evidence found necessary will be produced. In that case, however, inasmuch as any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined in the United States than elsewhere, on account of the presence there of the owners and captain of the „William P. Frye“ and their documentary records, and other possible witnesses, the Government of the United States ventures to suggest the advisability of transferring the negotiations for the settlement of these points to the Imperial German Embassy at Washington.

In view of the admission of liability by reason of specific treaty stipulations, it has become unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which is given some prominence in Your Excellency's note of April 5, further than to say that, as the German Government has already been advised, the Government of the United States does not regard the Declaration of London as in force.

Bryan.

Nr. 1936. Amerikanische Note vom 15. Mai 1915 in der „Lusitania“-Angelegenheit.

(**A. A. U.** Nr. 7.)

Berlin, May 15, 1915.

Excellency:

I have the honor to communicate to you the following copy of a telegram received from my Government:

„In view of recent acts of the German authorities in violation of American rights on the high seas which culminated in the torpedoing and sinking of the British steamship „Lusitania“ on Mai 7, 1915, by which over one hundred American citizens lost their lives, it is wise and desirable that the Government of the United States and the Imperial German Government should come to a clear and full understanding as to the grave situation which has resulted.

The sinking of the British passenger steamer „Falaba“ by a German submarine on March 28th through which *Leon C. Trasher*, an American citizen, was drowned; the attack on April 28th on the American vessel „Cushing“ by a German aeroplane; the torpedoing on May 1st of the American vessel „Gulflight“ by a German submarine, as a result of which two or more American citizens met their death; and finally the torpedoing and sinking of the steamship „Lusitania“ constitute a series of events which the Government of the United States has observed with growing concern, distress and amazement.

Recalling the humane and enlightened attitude hitherto assumed by the Imperial German Government in matters of international right and particularly with regard to the freedom of the seas; having learned to recognize the German views and the German influence in the field of international obligation as always engaged upon the side of justice and humanity; and having understood the instructions of the Imperial German Government to its naval commanders to be upon the same plane of humane action prescribed by the naval codes of other nations, the Government of the United States was loath to believe, it cannot now bring itself to believe, that these acts

so absolutely contrary to the rules, the practices and the spirit of modern warfare, could have the countenance or sanction of that great Government. It feels it to be its duty, therefore, to address the Imperial Government concerning them with the utmost frankness and in the earnest hope that it is not mistaken in expecting action on the part of the Imperial German Government which will correct the unfortunate impressions which have been created and vindicate once more the position of that Government with regard to the sacred freedom of the seas.

The Government of the United States has been apprised that the Imperial German Government considered themselves to be obliged by the extraordinary circumstances of the present war and the measures adopted by their adversaries in seeking to cut Germany off from all commerce, to adopt methods of retaliation which go much beyond the ordinary methods of warfare at sea, in the proclamation of a war zone, from which they have warned neutral ships to keep away. This Government has already taken occasion to inform the Imperial German Government that it cannot admit the adoption of such measures or such a warning of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality; and that it must hold the Imperial German Government to a strict accountability for any infringement of those rights, intentional or incidental. It does not understand the Imperial German Government to question those rights. It assumes on the contrary, that the Imperial German Government accepts, as of course, the rule that the lives of noncombatants, whether they may be of neutral citizenship or citizens of one of the nations at war, cannot lawfully or rightfully be put in jeopardy by the capture or destruction of an unarmed merchantman, and recognize also as all other nations do, the obligations to take the usual precaution of visit and search to ascertain, whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag. The Government of the United States, therefore, desires to call the attention of the Imperial German Government with the utmost earnestness to the fact, that the objection to their present method of attack against the trade of their enemies lies in the practical impossibility of employing submarines in the destruction of commerce without disregarding those rules of fairness, reason, justice and humanity, which all modern opinion regards as imperative. It is practically impossible for the officers of a submarine to visit a merchantman at sea and examine her papers and cargo; practically impossible for them, to make a prize of her; and if they cannot put a prizecrew on board of her, they cannot sink her without leaving her crew and all on board of her to the mercy of the sea in her small boats. These facts it is understood, the Imperial German Government frankly admit. We are informed that in the instance, of which we have spoken, time enough for even that poor measure of safety was not given and in at least two of the cases cited not so much as a warning was received. Manifestly submarines cannot be used against merchantmen, as the last few weeks have shown, without an inevitable violation of many sacred principles of justice and humanity.

American citizens act within their indisputable rights in taking their ships and in travelling wherever their legitimate business calls them upon the high seas, and exercise those rights in what should be the well justified confidence that their lives will not be endangered by acts done in clear violation of universally acknowledged international obligations and certainly in the confidence that their own Government will sustain them in the exercise of their rights.

There was recently published in the newspapers of the United States, I regret to inform the Imperial German Government, a formal warning

purporting to come from the Imperial German Embassy at Washington, addressed to the people of the United States, and stating, in effect, that a citizen of the United States, who exercised his right of free travel upon the seas would do so at his peril if his journey should take him within the zone of waters within which the Imperial German Navy was using submarines against the commerce of Great Britain and France notwithstanding the respectful but very earnest protest of his Government, the Government of the United States. I do not refer to this for the purpose of calling the attention of the Imperial German Government at this time to the surprising irregularity of communication from the Imperial German Embassy at Washington addressed to the people of the United States through the newspapers but only for the purpose of pointing out that no warning that an unlawful and inhumane act will be committed can possibly be accepted as an excuse or palliation for that act or as an abatement of the responsibility for its commission.

Long acquainted as this Government has been with the character of the Imperial German Government and with the high principles of equity by which they have in the past been actuated and guided, the Government of the United States cannot believe that the commanders of the vessels which committed these acts of lawlessness did so except under a misapprehension of the orders issued by the Imperial German Naval Authorities. It takes it for granted, that at least within the practical possibilities of every such case, the commanders even of submarines were expected to do nothing that would involve lives of noncombatants or the safety of neutral ships, even at the cost of feiling of their object of capture or destruction. It confidently expects therefore that the Imperial German Government will disavow the acts of which the Government of the United States complains, that they will make reparation so far as reparation is possible for injuries which are without measures, and that they will take immediate steps to prevent the recurrence of anything so obviously subversive of the principles of warfare for which the Imperial German Government have in the past so wisely and firmly contended.

The Government of the United States and people of the United States look to the Imperial German Government for just, prompt, and enlightened action in this vital matter with the greater confidence because the United States and Germany are bound together not only by special ties of friendship but also by the explicit stipulations of the Treaty of 1828 between the United States and the Kingdom of Prussia.

Expressions of regret and offers of reparation in case of the destruction of neutral ships sunk by mistake, while they may satisfy international obligations, if no loss of life results, cannot justify or excuse a practice, the natural and necessary effect of which is to subject neutral nations and neutral persons to new and unmeasurable risks.

The Imperial German Government will not expect the Government of the United States to omit any word or any act necessary to the performance of its sacred duty of maintaining the rights of the United States and its citizens and of safeguarding their free exercise and enjoyment."

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1937. Deutsche Note vom 28. Mai 1915 an Amerika. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin.

(**A. A. U.** Nr. 8.)

Berlin, 28. Mai 1915.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard* auf das Schreiben vom 15. d. M. über die Beeinträchtigung amerikanischer Interessen durch den deutschen Unterseebootkrieg nachstehendes zu erwidern:

Die Kaiserliche Regierung hat die Mitteilungen der Regierung der Vereinigten Staaten einer eingehenden Prüfung unterzogen und hegt auch ihrerseits den lebhaften Wunsch, in offener und freundschaftlicher Weise zur Aufklärung etwaiger Mißverständnisse beizutragen, die durch die von der amerikanischen Regierung erwähnten Vorkommnisse in den Beziehungen der beiden Regierungen eingetreten sein könnten.

Was zunächst die Fälle der amerikanischen Dampfer „Cushing" und „Gulflight" betrifft, so ist der amerikanischen Botschaft bereits mitgeteilt worden, daß der deutschen Regierung jede Absicht fernliegt, im Kriegsgebiet neutrale Schiffe, die sich keiner feindlichen Handlung schuldig gemacht haben, durch Unterseeboote oder Flieger angreifen zu lassen, vielmehr sind den deutschen Streitkräften wiederholt die bestimmtesten Anweisungen gegeben worden, Angriffe auf solche Schiffe zu vermeiden. Wenn in den letzten Monaten infolge von Verwechslungen neutrale Schiffe durch den deutschen Unterseebootkrieg zu Schaden gekommen sind, so handelt es sich um ganz vereinzelte Ausnahmefälle, die auf den Flaggenmißbrauch der britischen Regierung in Verbindung mit einem fahrlässigen oder verdächtigen Verhalten der Schiffskapitäne zurückzuführen sind. Die deutsche Regierung hat in allen Fällen, wo ein neutrales Schiff ohne eigenes Verschulden nach den von ihr getroffenen Feststellungen durch deutsche Unterseeboote oder Flieger zu Schaden gekommen ist, ihr Bedauern über den unglücklichen Zufall ausgesprochen und, wenn es in der Sachlage begründet war, Entschädigung zugesagt. Nach den gleichen Grundsätzen wird sie auch die Fälle der amerikanischen Dampfer „Cushing" und „Gulflight" behandeln; über diese Fälle ist eine Untersuchung im Gange, deren Ergebnis der Botschaft demnächst mitgeteilt werden wird, und die gegebenenfalls durch eine internationale Untersuchungskommission gemäß Titel III des Haager Abkommens zur friedlichen Erledigung internationaler Streitfälle vom 18. Oktober 1907 ergänzt werden könnte.

Bei der Versenkung des englischen Dampfers „Falaba" hatte der Kommandant des deutschen Unterseeboots die Absicht, den Passagieren und der Mannschaft volle Gelegenheit zu ihrer Rettung zu geben. Erst als der Kapitän der Aufforderung beizudrehen, nicht nachkam, sondern flüchtete und mit Raketensignalen Hilfe herbeirief, forderte der deutsche Kommandant zunächst die Mannschaft und die Passagiere durch Signale und Sprachrohr auf, das Schiff binnen zehn Minuten zu verlassen; tatsächlich ließ er ihnen dreiundzwanzig Minuten Zeit und schoß den Torpedo erst ab, als verdächtige Fahrzeuge der „Falaba" zu Hilfe eilten.

Was die Verluste an Menschenleben bei der Versenkung des britischen Passagierdampfers „Lusitania" anlangt, so hat die deutsche Regierung den beteiligten neutralen Regierungen bereits ihr lebhaftes Bedauern darüber zum Ausdruck gebracht, daß Angehörige ihrer Staaten ihr Leben bei dieser Gelegenheit verloren haben. Die Kaiserliche Regierung vermag sich im übrigen dem Eindruck nicht zu verschließen, daß gewisse wichtige Tatsachen,

die im unmittelbarsten Zusammenhang mit der Versenkung der „Lusitania“ stehen, der Aufmerksamkeit der Regierung der Vereinigten Staaten entgangen sein könnten. Sie hält es deshalb im Interesse des von beiden Regierungen angestrebten Zieles einer klaren und vollen Verständigung für notwendig, sich zunächst davon zu überzeugen, daß die den beiden Regierungen vorliegenden Nachrichten über den Sachverhalt vollständig sind und übereinstimmen.

Die Regierung der Vereinigten Staaten geht davon aus, daß die „Lusitania“ als ein gewöhnliches, unbewaffnetes Handelsschiff zu betrachten ist. Die Kaiserliche Regierung gestattet sich, in diesem Zusammenhange darauf hinzuweisen, daß die „Lusitania“ einer der größten und schnellsten, mit Regierungsmitteln als Hilfskreuzer gebauten, englischen Handelsdampfer war und in der von der englischen Admiralität herausgegebenen „Navy List“ ausdrücklich aufgeführt ist. Der Kaiserlichen Regierung ist ferner aus zuverlässigen Angaben ihrer Dienststellen und neutraler Passagiere bekannt, daß schon seit längerer Zeit so gut wie alle wertvolleren englischen Handelsschiffe mit Geschützen, Munition und anderen Waffen versehen und mit Personen bemannt sind, die in der Bedienung der Geschütze besonders geübt sind. Auch die „Lusitania“ hat nach hier vorliegenden Nachrichten bei der Abfahrt von New York Geschütze an Bord gehabt, die unter Deck versteckt aufgestellt waren.

Die Kaiserliche Regierung beehrt sich ferner, die besondere Aufmerksamkeit der amerikanischen Regierung darauf zu lenken, daß die britische Admiralität ihrer Handelsmarine in einer geheimen Anweisung vom Februar dieses Jahres empfohlen hat, nicht nur hinter neutralen Flaggen und Abzeichen Schutz zu suchen, sondern sogar unter dieser Verkleidung durch Rammen angriffsweise gegen deutsche Unterseeboote vorzugehen. Auch sind als besonderer Ansporn zur Vernichtung der Unterseeboote durch Handelsschiffe von der britischen Regierung hohe Preise ausgesetzt und auch bereits ausgezahlt worden. Angesichts dieser ihr einwandfrei bekannten Tatsachen vermag die Kaiserliche Regierung englische Kauffahrteischiffe auf dem vom Admiralstabe der Kaiserlich deutschen Marine bezeichneten Seekriegsschauplatz nicht mehr als „unverteidigtes Gebiet“ anzusehen; auch sind die deutschen Kommandanten infolgedessen nicht mehr in der Lage, die sonst für das Seebeuterecht üblichen Regeln zu beobachten, denen sie früher stets nachgekommen sind. Endlich muß die Kaiserliche Regierung besonders darauf hinweisen, daß die „Lusitania“ wie schon früher, so auch auf ihrer letzten Reise kanadische Truppen und Kriegsmaterial, unter diesem nicht weniger als 5400 Kisten Munition, an Bord hatte, die zur Vernichtung tapferer deutscher Soldaten, die mit Opfermut und Hingebung ihre Pflicht im Dienst des Vaterlandes erfüllen, bestimmt war. Die deutsche Regierung glaubt in gerechter Selbstverteidigung zu handeln, wenn sie mit den ihr zu Gebote stehenden Kriegsmitteln durch Vernichtung der für den Feind bestimmten Munition das Leben ihrer Soldaten zu schützen sucht. Die englische Schiffahrtsgesellschaft mußte sich der Gefahren, denen die Passagiere unter diesen Umständen an Bord der „Lusitania“ ausgesetzt waren, bewußt sein. Sie hat, wenn sie sie trotzdem an Bord nahm, in voller Ueberlegung das Leben amerikanischer Bürger als Schutz für die beförderte Munition zu benutzen versucht und sich in Widerspruch zu den klaren Bestimmungen der amerikanischen Gesetzgebung gesetzt, die die Beförderung von Passagieren auf Schiffen, die Explosivstoffe an Bord haben, ausdrücklich verbietet und mit Strafe bedroht. Sie hat dadurch in frevelhafter Weise den Tod so zahlreicher Passagiere verschuldet. Nach der ausdrücklichen Meldung des betreffenden U-Bootkommandanten, die durch alle sonstigen Nachrichten lediglich bestätigt wird, kann es keinem Zweifel unterliegen, daß der rasche Untergang der „Lusitania“ in erster Linie auf die

durch den Torpedoschuß verursachte Explosion der Munitionsladung zurückzuführen ist. Anderenfalls wären die Passagiere der „Lusitania" menschlicher Voraussicht nach gerettet worden.

Die Kaiserliche Regierung hält die im vorstehenden angeführten Tatsachen für wichtig genug, um sie einer aufmerksamen Prüfung der amerikanischen Regierung zu empfehlen. Indem die Kaiserliche Regierung sich ihre endgültige Stellungnahme zu den im Zusammenhang mit der Versenkung der „Lusitania" gestellten Forderungen bis nach Eingang einer Antwort der amerikanischen Regierung vorbehalten darf, glaubt sie schließlich an dieser Stelle darauf hinweisen zu sollen, wie sie seinerzeit mit Genugtuung von den Vermittlungsvorschlägen Kenntnis genommen hat, die seitens der amerikanischen Regierung in Berlin und London unterbreitet worden sind, um einen *modus vivendi* für die Führung des Seekriegs zwischen Deutschland und Großbritannien anzubahnen. Die Kaiserliche Regierung hat damals durch ihr bereitwilliges Eingehen auf diese Vorschläge ihren guten Willen zur Genüge dargetan. Die Verwirklichung dieser Vorschläge ist, wie bekannt, an der ablehnenden Haltung der großbritannischen Regierung gescheitert.

Indem der Unterzeichnete Seine Exzellenz den Herrn Botschafter bittet, vorstehendes zur Kenntnis der amerikanischen Regierung zu bringen, benutzt er diesen Anlaß, um dem Herrn Botschafter die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *Jagow.*

Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard.*

Nr. 1938. Gerard an Lansing, 7. Juni 1915. Uebermittlung der deutschen Antwort im „Frye"-Falle.

(**E. W. 2,** S. 185.)

(Telegram.) American Embassy, Berlin, June 7, 1915.

The following is the text of the reply of the German Government in the „Frye" case:

The undersigned has the honor to make the following reply to the note of His Excellency Mr. *James W. Gerard,* Ambassador of the United States of America, dated April 30, 1915 (F. O. No. 3291), on the subject of the sinking of the American sailing vessel „William P. Frye" by the German auxiliary cruiser „Prinz Eitel Friedrich":

The German Government can not admit that, as the American Government assumes, the destruction of the sailing vessel mentioned constitutes a violation of the treaties concluded between Prussia and the United States at an earlier date and now applicable to the relations between the German Empire and the United States or of the American rights derived therefrom. For these treaties did not have the intention of depriving one of the contracting parties engaged in war of the right of stopping the supply of contraband to his enemy when he recognizes the supply of such articles as detrimental to his military interests. On the contrary, Article 13 of the Prussian-American Treaty of Juli 11, 1799, expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it con not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it. As a matter of course, the obligation of the party at war to pay compensation to the interested persons of the neutral contracting party remains in force whatever be the manner of stopping the supply.

According to general principles of international law, any exercise of the right of control over the trade in contraband is subject to the decision of the Prize Courts, even though such right may be restricted by special treaties. At the beginning of the present war Germany, pursuant to these principles, established by law prize jurisdiction for cases of the kind under consideration. The case of the „William P. Frye“ is likewise subject to the German prize jurisdiction, for the Prussian-American Treaties mentioned contain no stipulation as to how the amount of the compensation provided by Article 13 of the treaty cited is to be fixed. The German Government, therefore, complies with its treaty obligations to a full extent when the Prize Courts instituted by it in accordance with international law proceed in pursuance of the treaty stipulations and thus award the American interested persons equitable indemnity. There would, therefore, be no foundation for a claim of the American Government, unless the Prize Courts should not grant indemnity in accordance with the treaty; in such an event, however, the German Government would not hesitate to arrange for equitable indemnity notwithstandig. For the rest, prize proceedings in the case of the „Frye“ are indispensable, apart from the American claims, for the reason that other claims of neutral and enemy interested parties are to be considered in the matter.

As was stated in the note of April 4 last, the Prize Court will have to decide the questions whether the destruction of the ship and cargo was legal; whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid provided application therefor is received. Since the decision of the Prize Court must first be awaited before any further position is taken by the German Government, the simplest way for the American interested parties to settle their claims would be to enter them in the competent quarter in accordance with the provisions of the German Code of Prize Procedure.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government, and avails himself at the same time of the opportunity to renew the assurances of his most distinguished consideration.

(Signed.) *v. Jagow.* *Gerard.*

Nr. 1939. Amerikanische Note vom 10. Juni 1915 an Deutschland. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.** Nr. 9.)

Berlin, June 10, 1915.

Excellency:

In compliance with Your Excellency's request I did not fail to transmit to my Government immediately upon receipt your Note of May 28th in reply to my Note of May 15th and your supplementary Note of June 1st setting forth the conclusions so far as reached by the Imperial German Government concerning the attacks on the American steamers „Cushing“ and „Gulflight“. I am now instructed by my Government to communicate the following in reply.

The Government of the United States notes with gratification the full recognition by the Imperial German Government in discussing the cases of the „Cushing“ and the „Gulflight“ of the principle of the freedom of all parts of the open sea to neutral ships and the frank willingness of the Imperial German Government to acknowledge and meet its liability where the fact of

attack upon neutral ships „which have not been guilty of any hostile act“ by German aircraft or vessels of war is satisfactorily established; the Government of the United States will in due course lay before the Imperial German Government, as it requests, full information concerning the attack on the steamer „Cushing“.

With regard to the sinking of the steamer „Falaba“, by which an American citizen lost his life, the Government of the United States is surprised to find the Imperial German Government contending that an effort on the part of a merchantman to escape capture and secure assistance alters the obligation of the officer seeking to make the capture in respect of the safety of the lives of those on board the merchantman although the vessel had ceased her attempt to escape when torpedoed. These are not new circumstances. They have been in the minds of statesman and of international jurists throughout the development of naval warfare, and the Government of the United States does not understand that they have ever been held to alter the principles of humanity on which it has insisted. Nothing but actual forcible resistance or continued efforts to escape by flight, when ordered to stop for the purpose of visit on the part of the merchantman has ever been held to forfeit the lives of her passengers or crew. The Government of the United States however does not understand, that the Imperial German Government is seeking in this case to relieve itself of liability but only intends to set forth the circumstances which led the Commander of the submarine to allow himself to be hurried into the course, which he took.

Your Excellency's Note, in discussing the loss of American lives resulting from the sinking of the steamship „Lusitania“, adverts at some length to certain information, which the Imperial German Government has received with regard to the character and outfit of that vessel, and Your Excellency expresses the fear that this information may not have been brought to the attention of the Government of the United States. It is stated in the Note, that the „Lusitania“ was undoubtedly armed with masked guns, supplied with trained gunners and special ammunition, transporting troops from Canada, carrying a cargo not permitted, under the laws of the United States to a vessel also carring passengers, serving in virtual effect, as an auxiliary to the naval forces of Great Britain.

Fortunately these are matters concerning which the Government of the United States is in a position to give the Imperial German Government official information. Of the facts alleged in Your Excellency's Note, if true, the Government of the United States would have been bound to take official cognizance in performing its recognized duty as a neutral power and in enforcing its national laws. It was its duty to see to it that the „Lusitania“ was not armed for offensive action and that she did not carry a cargo prohibited by the statutes of the United States and that if in fact she was a naval vessel of Great Britain she should not receive clearance as a merchantman; and it performed that duty and enforced its statutes with scrupulous vigilance through its regularly constituted officials. It is able therefore to assure the Imperial German Government that it has been misinformed. If the Imperial German Government should deem itself to be in possession of convincing evidence, that the officials of the Government of the United States did not perform their duties with throughness, the Government of the United States sincerely hopes that it will submit that evidence for consideration.

Whatever may be the contentions of the Imperial German Government regarding the carriage of contraband of war on board the „Lusitania“ or regarding the explosion of that material by the torpedo, it need only be said that in the view of this Government these contentions are irrevelant to the question of the legality of the methods used by the German naval

authorities in sinking the vessel. But the sinking of passenger ships involves principles of humanity which throw into the background any special circumstances of detail that may be thought to affect the cases, principles which lift it, as the Imperial German Government will no doubt be quick to recognize and acknowledge, out of the class of ordinary subjects of diplomatic discussion or of international controversy. Whatever be the other facts regarding the „Lusitania“, the principle fact is that a great steamer primarily and chiefly a conveyance for passengers, and carrying more than a thousand souls, who had no part or lot in the conduct of the war, was torpedoed and sunk without so much as a challenge or a warning, and that men, women and children were sent to their death in circumstances unparalleled in modern warfare. The fact that more than one hundred American citizens were among those who perished, made it the duty of the Government of the United States to speak of these things and once more with solemn emphasis to call the attention of the Imperial German Government to the grave responsibility which the Government of the United States conceives that it has incurred in this tragic occurrence and to the indisputable principle upon which that responsibility rests. The Government of the United States is contending for something much greater than mere rights of property or privileges of commerce. It is contending for nothing less high and sacred than the rights of humanity which every Government honors itself in respecting and which no Government is justified in resigning on behalf of those under its care and authority. Only her actual resistance to capture or refusal to stop, when ordered to do so for the purpose of visit, could have afforded the Commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy. This principle, the Government of the United States understands, the explicit instructions issued August 3rd, 1914, by the Imperial German Admiralty to its commanders at sea to have recognized and embodied. as do the naval codes of all other nations and upon it every traveller and seaman had a right to depend. It is upon this principle of humanity as well as upon the law founded upon this principle that the United States must stand.

The Government of the United States is happy to observe that Your Excellency's Note closes with the intimation that the Imperial German Government is willing, now as before, to accept the good offices of the United States in an attempt to come to an understanding with the Government of Great Britain, by which the character and conditions of the war upon the sea may be changed. The Government of the United States would consider it a privilege thus to serve its friends and the world. It stands ready at any time to convey to either Government any intimation or suggestion the other may by willing to have it convey and cordially invites the Imperial German Government to make use of its services in this way at its convenience. The whole world is concerned in anything that may bring about even a partial accomodation of interests or in any way mitigate the terrors of the present distressing conflict.

In the meantime whatever arrangement may happily be made between the parties to the war and whatever may in the opinion of the Imperial German Government have been the provocation or the circumstantial justification for the past acts of its Commanders at sea, the Government of the United States confidently looks to see the justice and humanity of the Government of Germany vindicated in all cases where Americans have been wronged or their rights as neutrals invaded.

The Government of the United States therefore very earnestly and very solemnly renews the representations of its Note transmitted to the Imperial German Government on the 15th of May, and relies in these representations

upon the principles of humanity, universally recognized understandings of international law, and the ancient friendship of the German nation.

The Government of the United States cannot admit that the proclamation of the war zone from which neutral ships have been warned to keep away, may be made to operate as in any degree an abbreviation of the rights either of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality. It does not understand the Imperial German Government to question those rights. It understands it, also, to accept as established beyond question the principles that the lives of noncombatants cannot lawfully or rightfully be put in jeopardy by the capture or destruction of an unresisting merchantman, and to recognize the obligation to take sufficient precaution to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag. The Government of the United States therefore deems it reasonable to expect that the Imperial German Government will adopt the measures necessary to put these principles into practice in respect of the safeguarding of American lives and American ships, and asks for assurances that this will be done.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow*,
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1940. Lansing an Gerard, 24. Juni 1915. Anweisung über die Behandlung des „Frye“-Falles.

(**E. W. 2,** S. 185—187.)

(Telegram.) Department of State, Washington, June 24, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

I have the honor to inform Your Excellency that I duly communicated to my Government your note of the 7th instant on the subject of the claim presented in my note of April 3d last, on behalf of the owners and captain of the American sailing vessel „William P. Frye“ in consequence of her destruction by the German auxiliary cruiser „Prinz Eitel Friedrich“.

In reply I am instructed by my Government to say that it has carefully considered the reasons given by the Imperial German Government for urging that this claim should be passed upon by the German Prize Court instead of being settled by direct diplomatic discussion between the two Governments, as proposed by the Government of the United States, and that it regrets to find that it can not concur in the conclusions reached by the Imperial German Government.

As pointed out in my last note to you on this subject, dated April 30, the Government of the United States has considered that the only question under discussion was the method which should be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and it notes with surprise that in addition to this question the Imperial German Government now desires to raise some questions as to the meaning and effect of the treaty stipulations under which it has admitted its liability.

If the Government of the United States correctly understands the position of the Imperial German Government as now presented, it is that the provisions of Article 13 of the Treaty of 1799 between the United States and

Prussia, which is continued in force by the Treaty of 1828, justified the commander of the „Prinz Eitel Friedrich“ in sinking the „William P. Frye“, although making the Imperial German Government liable for the damages suffered in consequence, and that inasmuch as the treaty provides no specific method for ascertaining the amount of indemnity to be paid, that question must be submitted to the German Prize Court for determination.

The Government of the United States, on the other hand, does not find in the treaty stipulations mentioned any justification for the sinking of the „Frye“, and does not consider that the German Prize Court has any jurisdiction over the question of the amount of indemnity to be paid by the Imperial German Government on account of its admitted liability for the destruction of an American vessel on the high seas.

You state in your note of the 7 th instant that article 13 of the abovementioned treaty of 1799 „expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it“.

The Government of the United States can not concur in this conclusion. On the contrary, it holds that these treaty provisions do not authorize the destruction of a neutral vessel in any circumstances. By its express terms the treaty prohibits even the detention of a neutral vessel carrying contraband if the master of the vessel is willing to surrender the contraband. Article 13 provides „in the case supposed of a vessel stopped for articles of contrabands if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage“.

In this case the admitted facts show that pursuant to orders from the commander of the German cruiser, the master of the „Frye“ understook to throw overboard the cargo of that vessel, but that before the work of delivering out the cargo was finished the vessel with the cargo was sunk by order of the German commander.

For these reasons, even if it be assumed as Your Excellency has done, that the cargo was contraband, your contention that the destruction of the vessel was justified by the provisions of Article 13 does not seem to be well founded. The Government of the United States has not thought it necessary in the discussion of this case to go into the question of the contraband or noncontraband charakter of the cargo. The Imperial German Government has admitted that this question makes no difference so far as its liability for damages is concerned, and the result is the same so far as the justification for the sinking of the vessel is concerned. As shown above, if we assume that the cargo was contraband, the master of the „Frye“ should have been allowed to deliver it out, and the vessel should have been allowed to proceed on her voyage.

Oo the other hand, if we assume that the cargo was noncontraband, the destruction either of the cargo or the vessel could not be justified in the circumstances of this case under any accepted rule of international law. Attention is also called to the provisions of Article 12 of the Treaty of 1785 between the United States and Prussia, which, like Article 13 of the Treaty of 1799, was continued in force by Article 12 of the Treaty of 1828. So far as the provisions of Article 12 of the treaty of 1785 apply to the question under consideration, they are as follows:

„If one of the contracting parties should be angaged in war with any other Power, the free intercourse and commerce of the subjects or citizens

of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that cases as in full peace the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other."

It seems clear to the Government of the United States, therefore, that whether the cargo of the „Frye" is regarded as contraband or as noncontraband, the destruction of the vessel was, as stated in my previous communication on this subject, „a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia".

For these reasons the Government of the United States must disagree with the contention which it understands is now made by the Imperial German Government that an American vessel carrying contraband may be destroyed without liability or accountability beyond the payment of such compensation for damages as may be fixed by a German Prize Court. The issue thus presented arises on a disputed interpretation of treaty provisions, the settlement of which requires direct diplomatic discussion between the two Governments, and can not properly be based upon the decision of the German Prize Court, which is in no way conclusive or binding upon the Government of the United States.

Moreover, even if no disputed questions of treaty interpretation was involved, the admission by the Imperial German Government of its liability for damages for sinking the vessel would seem to make it unnecessary, so far as this claim is concerned, to ask the Prize Court to decide „whether the destruction of the ship and cargo was legal, and whether and under what conditions the property sunk was liable to confiscation", which, you state in your note dated June 7, are questions which should be decided by the Prize Court. In so far as these questions relate to the cargo, they are outside of the present discussion, because, as pointed out in my previous note to you on the subject dated April 30, „the claim under discussion does not include damages for the destruction of the cargo".

The real question between the two Governments is what reparation must be made for a breach of treaty obligations. and that is not a question which falls within the jurisdiction of a Prize Court.

In my first note on the subject the Government of the United States requested that „full reparation be made by the Imperial German Government for the destruction of the „William P. Frye". Reparation necessarily includes an indemnity for the actual pecuniary loss sustained, and the Government of the United States takes this opportunity to assure the Imperial German Government that such an indemnity, if promptly paid, will be accepted as satisfactory reparation, but it does not rest with a Prize Court to determine what reparation should be made or what reparation would be satisfactory to the Government of the United States.

Your Excellency states in your note of June 7 that in the event the Prize Court should not grant indemnity in accordance with the treaty requirements, the German Government would not hesitate to arrange for equitable indemnity, but it is also necessary that the Government of the United States should be satisfied with the amount of the indemnity, and it would seem to be more appropriate and convenient that an arrangement for equitable indemnity should be agreed upon now rather than later. The decision of the Prize Court, even on the question of the amount of indemnity to be paid, would not be binding or conclusive on the Government of the United States.

The Government of the United States also dissents from the view expressed in your note that „there would be no foundation for a claim of the American Government unless the Prize Courts should not grant indemnity in accordance with the treaty“. The claim presented by the American Government is for an indemnity for a violation of a treaty, in distinction from an indemnity in accordance with the treaty, and therefore is a matter for adjustment by direct diplomatic discussion between the two Governments and is in no way dependent upon the action of a German Prize Court.

For the reasons above stated the Government of the United States can not recognize the propriety of submitting the claim presented by it on behalf of the owners and captain of the „Frye“ to the German Prize Court for settlement.

The Government of the United States is not concerned with any proceedings which the Imperial German Government may wish to take on „other claims of neutral and enemy interested parties“ which have not been presented by the Government of the United States, but which you state in your note of June 7 make Prize Court proceedings in this case indispensable, and it does not perceive the necessity for postponing the settlement of the present claim pending the consideration of those other claims by the Prize Court.

The Government of the United States, therefore, suggests that the Imperial German Government reconsider the subject in the light of these considerations, and because of the objections against resorting to the Prize Court the Government of the United States renews its former suggestion that an effort be made to settle this claim by direct diplomatic negotiations.

Lansing.

Nr. 1941. Oesterreichisch-ungarische Note vom 29. Juni 1915 an Amerika über die Lieferung von Munition an Kriegführende. (Norddeutsche Allgemeine Zeitung, Nr. 194, Zweite Ausgabe vom 15. Juli 1915*).

Wien, den 29. Juni 1915.

Die tiefgreifenden Wirkungen, welche sich aus der Tatsache ergeben, daß sich seit geraumer Zeit zwischen den Vereinigten Staaten von Amerika einerseits und Großbritannien und dessen Verbündeten andererseits ein Handelsverkehr mit Kriegsbedarf in größtem Umfange abspielt, während Oesterreich-Ungarn, gleich Deutschland, vom amerikanischen Markt völlig abgeschlossen ist, haben von allem Anfang an die ernsteste Aufmerksamkeit der k. und k. Regierung auf sich gezogen. Wenn nun der Unterzeichnete sich erlaubt, in dieser Frage, mit welcher das Washingtoner Kabinett bisher bloß von der Kaiserlich deutschen Regierung befaßt worden ist, das Wort zu nehmen, so folgt er hierbei dem Gebote der unabweislichen Pflicht, die ihm anvertrauten Interessen vor weiterer schwerer Schädigung zu bewahren, die aus dieser Situation, gleichwie für das Deutsche Reich, so auch für Oesterreich-Ungarn erwächst.

Ist auch die k. und k. Regierung durchaus davon überzeugt, daß die Haltung, welche die Bundesregierung in dieser Angelegenheit einnimmt, keiner anderen Absicht entspringt, als der, die strikteste Neutralität zu wahren und sich in dieser Beziehung den in Betracht kommenden Bestimmungen der internationalen Verträge bis auf den Buchstaben anzupassen, so drängt

*) S. auch **E. W. 2,** S. 193—194. Herausgeber.

sich doch die Frage auf, ob die Verhältnisse, wie sie sich im Laufe des Krieges gewiß unabhängig von dem Willen der Bundesregierung herausgebildet haben, nicht derart beschaffen sind, daß die Intentionen des Washingtoner Kabinetts der Wirkung nach durchkreuzt, ja geradezu ins Gegenteil verkehrt werden. Wird aber diese Frage bejaht — und ihre Bejahung kann nach der Meinung der k. und k. Regierung nicht zweifelhaft sein —, dann knüpft sich hieran von selbst die weitere Frage, ob es nicht möglich, ja sogar geboten erscheint, daß Maßnahmen ergriffen werden, die geeignet sind, dem Wunsch der Bundesregierung, den beiden Kriegsparteien gegenüber eine streng paritätische Haltung einzunehmen, volle Geltung zu verschaffen. Die k. und k. Regierung zögert nicht, auch diese Frage unbedingt zu bejahen.

Der amerikanischen Regierung, die am Haager Werk in so hervorragender Weise mitgewirkt hat, ist es sicherlich nicht entgangen, daß sich Wesen und Inhalt der Neutralität in den fragmentarischen Vorschriften der einschlägigen Verträge nicht annähernd erschöpfen. Faßt man speziell die Entstehungsgeschichte der Artikel 7 der V., bezw. XIII. Konvention ins Auge, auf die sich die Bundesregierung im vorliegenden Fall offenbar stützt, und deren Wortlaut ihr, wie durchaus nicht geleugnet werden soll, eine formale Handhabe für die Duldung des von den Vereinigten Staaten gegenwärtig betriebenen Handels mit Kriegsmaterial bietet, so bedarf es, um den wahren Geist und die Tragweite dieser Bestimmungen zu ermessen — die übrigens schon durch das Verbot der Lieferung von Kriegsschiffen und durch das Verbot gewisser Lieferungen an Kriegsschiffe kriegführender Länder durchbrochen erscheint — nicht erst des Hinweises darauf, daß die den neutralen Staaten im einzelnen eingeräumten Befugnisse im Sinne des Préambule zur letztgenannten Konvention ihre Grenzen finden an den Forderungen der Neutralität, wie sie den allgemein anerkannten Prinzipien des internationalen Rechtes entsprechen.

Nach allen Autoritäten des Völkerrechts, die sich mit der hier zunächst in Betracht kommenden Frage des näheren beschäftigen, darf die neutrale Regierung den Handel mit Kriegskonterbande nicht ungehindert sich vollziehen lassen, wenn dieser Handel eine solche Gestalt oder solche Dimensionen annimmt, daß dadurch die Neutralität des Landes in Mitleidenschaft gezogen wird. Mag man nun der Beurteilung der Zulässigkeit des Konterbandehandels welches der verschiedenen Kriterien immer zugrundelegen, die in dieser Hinsicht in der Wissenschaft aufgestellt wurden, so gelangt man nach jedem einzelnen derselben zum Schluß, daß der Export von Kriegsbedarf aus den Vereinigten Staaten, wie er im gegenwärtigen Krieg betrieben wird, mit den Forderungen der Neutralität nicht in Einklang zu bringen ist. Es handelt sich jetzt nicht etwa um die Frage, ob die amerikanische Industrie, die sich mit der Erzeugung von Kriegsmaterial beschäftigt, davor bewahrt werden soll, daß der Export, den sie zu Friedenszeiten betrieben hat, eine Einbuße erleide. Vielmehr hat diese Industrie gerade infolge des Krieges eine ungeahnte Steigerung erfahren. Um die ungeheuren Mengen von Waffen, Munition und sonstigem Kriegsmaterial aller Art zu fabrizieren, welche Großbritannien und dessen Verbündete im Laufe der vergangenen Monate in den Vereinigten Staaten von Amerika bestellt haben, bedurfte es nicht nur der vollen Ausnützung, sondern sogar der Umwandlung und Erweiterung der bestehenden und der Schaffung neuer großer Betriebe, sowie des Zuströmens von Massen von Arbeitern aller Branchen zu diesen Betrieben, kurz tiefgreifender, das ganze Land erfassender Aenderungen des wirtschaftlichen Lebens. Der amerikanischen Regierung kann sonach von keiner Seite das Recht bestritten werden, durch Erlassung eines Ausfuhrverbotes diesen offen am Tag liegenden enormen Export von Kriegsbedarf zu inhibieren, von welchem überdies notorisch ist, daß er nur einer der Kriegsparteien zugute-

kommen kann. Würde die Bundesregierung von dieser ihr zustehenden Befugnis Gebrauch machen, so könnte sie ein Vorwurf auch dann nicht treffen, wenn sie, um mit den Anforderungen der nationalen Gesetzgebung in Einklang zu bleiben, den Weg der Erlassung eines Gesetzes beschritte. Denn wenn es auch prinzipiell zutrifft, daß ein neutraler Staat die in seinem Bereich geltenden Vorschriften, betreffend sein Verhalten zu den Kriegführenden, nicht abändern soll, solange der Krieg dauert, so erleidet dieser Grundsatz doch, wie sich aus dem Préambule der XIII. Haager Konvention klar ergibt, in dem Fall eine Ausnahme, *„où l'expérience acquise en démontrerait la nécessité pour la sauvegarde de ses droits"*. Dieser Fall ist für die amerikanische Regierung schon mit der Tatsache gegeben, daß übrigens Oesterreich-Ungarn, ebenso wie Deutschland, von jedem Handelsverkehr mit den Vereinigten Staaten von Amerika abgeschnitten ist, ohne daß die rechtliche Voraussetzung hierfür — eine rechtsgültige Blockade — vorläge.

Dem etwaigen Einwand gegenüber, daß es bei aller Bereitwilligkeit der amerikanischen Industrie, wie an Großbritannien und dessen Verbündete, so auch an Oesterreich-Ungarn und Deutschland zu liefern, den Vereinigten Staaten von Amerika eben nur infolge der Kriegslage nicht möglich sei, mit Oesterreich-Ungarn und Deutschland Handel zu treiben, darf wohl darauf hingewiesen werden, daß die Bundesregierung zweifellos in der Lage wäre, dem geschilderten Zustand abzuhelfen. Es würde wohl vollauf genügen, den Gegnern Oesterreich-Ungarns und Deutschlands die Sistierung der Zufuhr von Lebensmitteln und Rohstoffen für den Fall in Aussicht zu stellen, daß der legitime Handel in diesen Artikeln zwischen der Union und den beiden Zentralmächten nicht freigegeben wird.

Wenn sich das Washingtoner Kabinett zu einer Aktion in diesem Sinne bereit fände, so würde es nicht nur der in den Vereinigten Staaten stets hochgehaltenen Tradition folgen, für die Freiheit des legitimen Seehandels einzutreten, sondern sich auch das hohe Verdienst erwerben, das frevelhafte Bestreben der Feinde Oesterreich-Ungarns und Deutschlands, sich des Hungers als Bundesgenossen zu bedienen, zunichte zu machen.

Die k. und k. Regierung darf sonach im Geiste der ausgezeichneten Beziehungen, die niemals aufgehört haben, zwischen der österreichisch-ungarischen Monarchie und den Vereinigten Staaten von Amerika zu bestehen, an die Bundesregierung den von aufrichtiger Freundschaft getragenen Appell richten, sie möge unter Bedachtnahme auf die hier entwickelten Darlegungen den von ihr in dieser so hochbedeutsamen Frage bisher eingenommenen Standpunkt einer reiflichen Ueberprüfung unterziehen. Eine Revision der seitens der Unionsregierung beobachteten Haltung im Sinne der von der k. und k. Regierung vertretenen Auffassung würde nach deren Ueberzeugung nicht nur im Rahmen der Rechte und Obliegenheiten einer neutralen Regierung, sondern auch in den Richtlinien jener von wahrer Menschlichkeit und Friedensliebe beherrschten Grundsätze liegen, welche die Vereinigten Staaten von Amerika von jeher auf ihr Banner geschrieben haben.

Indem der Unterzeichnete die Ehre hat, die sehr gefällige Vermittlung Seiner Exzellenz des außerordentlichen und bevollmächtigten Botschafters der Vereinigten Staaten von Amerika, Herrn *Frederic Bourtland Penfield*, mit der Bitte ganz ergebenst in Anspruch zu nehmen, die vorstehenden Ausführungen auf telegraphischem Wege zur Kenntnis des Washingtoner Kabinetts bringen zu wollen, benützt er zugleich auch diesen Anlaß, um Seiner Exzellenz dem Herrn amerikanischen Botschafter den Ausdruck seiner ausgezeichnetsten Hochachtung zu erneuern.

Burián m. p.

Nr. 1942. Deutsche Note vom 8. Juli 1915 an Amerika. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin.

(**A. A. U.** Nr. 10.)

Berlin, den 8. Juli 1915.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika Herrn *James W. Gerard* auf die Note vom 10. v. M. — F. O. Nr. 3814 — über die Beeinträchtigung amerikanischer Interessen durch den deutschen Unterseebootskrieg nachstehendes zu erwidern:

Die Kaiserliche Regierung hat mit Genugtuung aus der Note entnommen, wie sehr es der Regierung der Vereinigten Staaten am Herzen liegt, die Grundsätze der Menschlichkeit auch im gegenwärtigen Kriege verwirklicht zu sehen. Dieser Appell findet in Deutschland vollen Widerhall, und die Kaiserliche Regierung ist durchaus gewillt, ihre Darlegungen und Entschließungen auch im vorliegenden Fall ebenso von den Prinzipien der Humanität bestimmen zu lassen, wie sie dies stets getan hat.

Dankbar hat die Kaiserliche Regierung begrüßt, daß die amerikanische Regierung in ihrer Note vom 15. Mai d. Js. selbst daran erinnert hat, wie sich Deutschland in der Behandlung des Seekriegsrechts stets von den Grundsätzen des Fortschritts und der Menschlichkeit hat leiten lassen. In der Tat haben seit der Zeit, wo *Friedrich der Große* mit *John Adams, Benjamin Franklin* und *Thomas Jefferson* den Freundschafts- und Handelsvertrag vom 10. September 1785 zwischen Preußen und der Republik des Westens vereinbarte, deutsche und amerikanische Staatsmänner in dem Kampf für die Freiheit der Meere und für den Schutz des friedlichen Handels immer zusammengestanden. Bei den internationalen Verhandlungen, die später zur Regelung des Seekriegsrechts gepflogen wurden, sind Deutschland und Amerika gemeinsam für fortschrittliche Grundsätze, insbesondere für die Abschaffung des Seebeuterechts sowie für die Wahrung der neutralen Interessen eingetreten. Noch bei Beginn des gegenwärtigen Krieges hat sich die deutsche Regierung auf den Vorschlag der amerikanischen Regierung sofort bereit erklärt, die Londoner Seekriegsrechtserklärung zu ratifizieren und sich dadurch bei der Verwendung ihrer Seestreitkräfte allen dort vorgesehenen Beschränkungen zugunsten der Neutralen zu unterwerfen. Ebenso hat Deutschland stets an dem Grundsatz festgehalten, daß der Krieg mit der bewaffneten und organisierten Macht des feindlichen Staates zu führen ist, daß dagegen die feindliche Zivilbevölkerung nach Möglichkeit von den kriegerischen Maßnahmen verschont bleiben muß. Die kaiserliche Regierung hegt die bestimmte Hoffnung, daß es beim Eintritt des Friedens oder sogar schon früher gelingen wird, das Seekriegsrecht in einer Weise zu ordnen, die die Freiheit der Meere verbürgt, und sie wird es mit Dank und Freude begrüßen, wenn sie dabei Hand in Hand mit der amerikanischen Regierung arbeiten kann.

Wenn in dem gegenwärtigen Kriege je länger je mehr die Grundsätze durchbrochen worden sind, die das Ziel der Zukunft sein sollten, so trägt die deutsche Regierung keine Schuld daran.

Der amerikanischen Regierung ist es bekannt, wie von vornherein und in steigender Rücksichtslosigkeit Deutschlands Gegner darauf ausgegangen sind, unter Lossagung von allen Regeln des Völkerrechts und unter Mißachtung aller Rechte der Neutralen durch die völlige Lahmlegung des friedlichen Verkehrs zwischen Deutschland und den neutralen Ländern nicht sowohl die Kriegführung, als vielmehr das Leben der deutschen Nation vernichtend zu treffen. Am 3. November v. J. hat England die Nordsee zum Kriegsgebiet erklärt und der neutralen Schiffahrt die Durchfahrt durch Legung schlecht verankerter Minen sowie durch Anhalten und Aufbringung der

Schiffe aufs äußerste gefährdet und erschwert, so daß es tatsächlich neutrale Küsten und Häfen gegen alles Völkerrecht blockiert. Lange vor Beginn des Unterseebootskrieges hat England auch die legitime neutrale Schiffahrt nach Deutschland so gut wie völlig unterbunden. So wurde Deutschland zu dem Handelskrieg mit Unterseebooten gezwungen. Bereits am 16. November v. J. hat der englische Premierminister im Unterhause erklärt, daß es eine der Hauptaufgaben Englands sei, zu verhindern, daß Nahrungsmittel für die deutsche Bevölkerung über neutrale Häfen nach Deutschland gelangten. Seit dem 1. März d. J. endlich nimmt England von den neutralen Schiffen alle nach Deutschland gehenden sowie alle von Deutschland kommenden Waren, auch wenn sie neutrales Eigentum sind, ohne weiteres weg. Wie seinerzeit die Buren, so soll jetzt das deutsche Volk vor die Wahl gestellt werden, ob es mit seinen Frauen und Kindern dem Hungertode erliegen oder seine Selbständigkeit aufgeben wolle.

Während uns so unsere Feinde laut und offen den Krieg ohne Gnade und bis zur völligen Vernichtung angesagt haben, führen wir den Krieg in der Notwehr für unsere nationale Existenz und um eines dauernd gesicherten Friedens willen. Den erklärten Absichten unserer Feinde und der von ihnen angewandten völkerrechtswidrigen Kriegführung haben wir den Unterseebootskrieg anpassen müssen.

Bei allen grundsätzlichen Bemühungen, neutrales Leben und Eigentum nach Möglichkeit vor Schädigung zu bewahren, hat die deutsche Regierung schon in der Denkschrift vom 4. Februar rückhaltlos anerkannt, daß durch den Unterseebootkrieg Interessen der Neutralen in Mitleidenschaft gezogen werden könnten. Aber ebenso wird auch die amerikanische Regierung zu würdigen wissen, daß die Kaiserliche Regierung in dem Daseinskampf, der Deutschland von seinen Gegnern aufgezwungen und angekündigt ist, die heilige Pflicht hat, alles, was irgend in ihrer Macht steht, zu tun, um das Leben der deutschen Untertanen zu schützen und zu retten. Wollte die Kaiserliche Regierung diese ihre Pflichten versäumen, so würde sie sich vor Gott und der Geschichte der Verletzung derjenigen Prinzipien höchster Humanität schuldig machen, die die Grundlagen jedes Staatslebens sind.

Mit erschreckender Deutlichkeit zeigt der Fall der „Lusitania“, zu welcher Gefährdung von Menschenleben die Art der Kriegführung unserer Gegner führt. Durch die unter Verheißung von Prämien erfolgte Anweisung an die britischen Handelsschiffe, sich zu armieren und die Unterseeboote zu rammen, ist in schärfstem Widerspruch mit allen Grundsätzen des Völkerrechts jede Grenze zwischen den Handels- und Kriegsschiffen verwischt, und sind die Neutralen, die die Handelsschiffe als Reisende benutzen, allen Gefahren des Krieges in erhöhtem Maße ausgesetzt worden. Hätte der Kommandant des deutschen Unterseebootes, welches die „Lusitania“ vernichtete, Mannschaften und Reisende vor der Torpedierung ausbooten lassen, so hätte dies die sichere Vernichtung seines eigenen Bootes bedeutet. Nach allen bei der Versenkung viel kleinerer und weniger seesüchtiger Schiffe gemachten Erfahrungen war zu erwarten, daß ein so mächtiges Schiff wie die „Lusitania“ auch nach der Torpedierung lange genug über Wasser bleiben würde, um die Passagiere in die Schiffsboote gehen zu lassen. Umstände ganz besonderer Art, insonderheit das Vorhandensein großer Mengen hochexplosiver Stoffe an Bord, haben diese Erwartung getäuscht. Außerdem darf noch darauf hingewiesen werden, daß bei Schonung der „Lusitania“ Tausende von Kisten mit Munition den Feinden Deutschlands zugeführt und dadurch Tausende deutscher Mütter und Kinder ihrer Ernährer beraubt worden wären.

In dem Geiste der Freundschaft, von der das deutsche Volk gegenüber der Union und ihren Bewohnern seit den ersten Tagen ihres Bestehens beseelt ist, wird die Kaiserliche Regierung immer bereit sein, auch während des

gegenwärtigen Krieges alles ihr Mögliche zu tun, um der Gefährdung des Lebens amerikanischer Bürger vorzubeugen.

Die kaiserliche Regierung wiederholt daher die Zusicherung, daß amerikanische Schiffe in der Ausübung der legitimen Schiffahrt nicht gehindert und das Leben amerikanischer Bürger auf neutralen Schiffen nicht gefährdet werden sollen.

Um unvorherzusehende, bei der Seekriegführung der Gegner Deutschlands mögliche Gefährdungen amerikanischer Passagierdampfer auszuschließen, werden die deutschen Unterseeboote angewiesen werden, solche durch besondere Abzeichen kenntlich gemachte und in angemessener Zeit vorher angesagte Passagierdampfer frei und sicher passieren zu lassen. Dabei gibt sich die kaiserliche Regierung allerdings der zuverlässigen Hoffnung hin, daß die amerikanische Regierung die Gewähr dafür übernimmt, daß diese Schiffe keine Konterbande an Bord haben. Die näheren Vereinbarungen für die unbehelligte Fahrt dieser Schiffe würde von den beiderseitigen Marinebehörden zu treffen sein.

Zur Schaffung ausreichender Reisegelegenheit für amerikanische Bürger über den Atlantischen Ozean stellt die deutsche Regierung zur Erwägung, die Zahl der verfügbaren Dampfer dadurch zu vermehren, daß eine angemessene, der genaueren Vereinbarung unterliegende Zahl neutraler Dampfer unter amerikanischer Flagge in den Passagierdienst unter den gleichen Bedingungen wie die vorgenannten amerikanischen Dampfer eingestellt wird.

Die kaiserliche Regierung glaubt annehmen zu dürfen, daß auf diese Weise ausreichende Gelegenheiten für amerikanische Bürger zur Reise über den Atlantischen Ozean zu schaffen sind. Eine zwingende Notwendigkeit für amerikanische Bürger, in Kriegszeiten auf Schiffen unter feindlicher Flagge nach Europa zu reisen, dürfte demnach nicht vorliegen. Insbesondere vermag die kaiserliche Regierung nicht zuzugeben, daß amerikanische Bürger ein feindliches Schiff durch die bloße Tatsache ihrer Anwesenheit an Bord zu schützen vermögen. Deutschland ist lediglich dem Beispiel Englands gefolgt, als es einen Teil der See zum Kriegsgebiet erklärte. Unfälle, die in diesem Kriegsgebiet Neutralen auf feindlichen Schiffen zustoßen sollten, könnten daher nicht wohl anders beurteilt werden als Unfälle, denen Neutrale auf dem Kriegsschauplatz zu Lande jederzeit ausgesetzt sind, wenn sie sich trotz vorheriger Warnung in Gefahr begeben.

Sollte sich jedoch die Erwerbung neutraler Passagierdampfer für die amerikanische Regierung nicht in ausreichendem Umfange ermöglichen lassen, so ist die kaiserliche Regierung bereit, keine Einwendungen dagegen zu erheben, daß die amerikanische Regierung vier Passagierdampfer feindlicher Flagge für den Passagierverkehr Nordamerika-England unter amerikanische Flagge bringt. Die Zusagen für die „freie und sichere" Fahrt amerikanischer Passagierdampfer würde dann unter den gleichen Vorbedingungen auch auf diese früher feindlichen Passagierdampfer ausgedehnt werden.

Der Herr Präsident der Vereinigten Staaten hat in dankenswerter Weise sich zur Uebermittelung und Anregung von Vorschlägen an die großbritannische Regierung insonderheit wegen Aenderung des Seekriegs bereit erklärt. Die kaiserliche Regierung wird stets von den guten Diensten des Herrn Präsidenten gern Gebrauch machen und gibt sich der Hoffnung hin, daß seine Bemühungen sowohl im vorliegenden Falle wie auch für das große Ziel der Freiheit der Meere zu einer Verständigung führen werden.

Indem der Unterzeichnete den Herrn Botschafter bittet, vorstehendes zur Kenntnis der amerikanischen Regierung zu bringen, benutzt er diesen Anlaß, um Seiner Exzellenz die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern. gez. *von Jagow.*

An Seine Exzellenz den Botschafter der Vereinigten Staaten von Amerika
Herrn *James W. Gerard.*

Nr. 1943. Amerikanische Note vom 23. Juli 1915 an Deutschland. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.** Nr. 11.)

Berlin, July 23, 1915.

Excellency:

Acting under instructions from my Government, I have the honor to inform Your Excellency that the Note of the Imperial German Government dated the 8th of July 1915, has received the careful consideration of the Government of the United States and it regrets to be obliged to say, that it has found it very unsatisfactory because it falls to meet the real differences between the two Governments and indicates no way, in which the accepted principles of law and humanity may be applied in the grave matter in controversy but proposes on the contrary arrangements for a partial suspension of those principles which virtually set them aside.

The Government of the United States notes with satisfaction that the Imperial German Government recognizes without reservation the validity of the principles insisted on in the several communications which this Government has adressed to the Imperial German Government with regard to its announcement of a war zone and the use of submarines against merchantmen on the high seas, the principle that the high seas are free, that the character and cargo of a merchantman must first be ascertained before she can lawfully be seized or destroyed, and that the lives of noncombatants may in no case be put in jeopardy unless the vessel resists or seeks to escape after being summoned to submit to examination: for a belligerent act of retaliation is per se an act beyond the law, and the defence of an act as retaliatory is an admission that it is illegal.

The Government of the United States is, however, keenly disappointed to find that the Imperial German Government regards itself as in a large degree exempt from the obligation to observe these principles, even where neutral vessels are concerned, by what it believes the policy and practice of the Government of Great Britain to be in the present war with regard to neutral commerce. The Imperial German Government will readily understand that the Government of the United States cannot discuss the policy of the Government of Great Britain with regard to obligations of a neutral government except with that government itself, and that it must regard the conduct of other belligerent governments as irrelevant to any discussion with the Imperial German Government of what this Government regards as grave and unjustifiable violations of the rights of American citizens by German naval Commanders. Illegal and inhumane acts. however justifiable they may be thought to be against an enemy who is believed to have acted in contravention of law and humanity, are manifestly indefensible when they deprive neutrals of their acknowledged rights, particularly when they violate the right of life itself. If a belligerent cannot retaliate against an enemy without injuring the lives of neutrals, as well as their property, humanity as well as justice and a due regard for the dignity of neutral powers, should dictate that the practice be discontinued. If persisted in it would in such circumstances constitute an unpardonable offence against the sovereignty of neutral nations affected. The Government of the United States is not unmindful of the extraordinary conditions created by this war or of the radical alterations of circumstance and method of attack produced by the use of the instrumentalities of naval warfare which the nations of the world cannot have had in view, when the existing rules of international law were formulated, and it is ready to make every reasonable allowance for these novel and unexpected

aspects of war at sea; but it cannot consent to abate any essential or fundamental right of its people because of a mere alteration of circumstance. The rights of neutrals in time of war are based upon principle, not upon expediency, and the principles are immutable. It is the duty and obligation of belligerents to find a way to adapt the new circumstances to them.

The events of the past two months have clearly indicated that it is possible and practicable to conduct such submarine operations as have characterized the activity of the Imperial German Navy within the so-called war zone in substantial accord with the accepted practices of regulated warfare. The whole world has looked with interest and increasing satisfaction at the demonstration of that possibility by German naval Commanders. It is manifestly possible, therefore, to lift the whole practice of submarine attack above the criticism which it has aroused and remove the chief causes of offence.

In view of the admission of illegality made by the Imperial Government when it pleaded the right of retaliation in defense of its acts, and in view of the manifest possibility of conforming to the established rules of naval warfare. the Government of the United States cannot believe that the Imperial Government will longer refrain from disavowing the wanton act of its naval Commander in sinking the „Lusitania" or from offering reparation for the American lives lost, so far as reparation can be made for needless destruction of human life by an illegal act.

The Government of the United States, while not indifferent to the friendly spirit in which it is made cannot, accept the suggestion of the Imperial German Government that certain vessels be designated and agreed upon, which shall be free on the seas now illegally proscribed. The very agreement would, by implication, subject other vessels to illegal attack and would be a curtailment and therefore an abandonment of the principles for which this Government contends or which in times of calmer counsels every nation would concede as of course.

The Government of the United States and the Imperial German Government are contending for the same great object, have long stood together in urging the very principles, upon which the Government of the United States now so solemnly insists. They are both contending for the freedom of the seas. The Government of the United States will continue to contend for that freedom from whatever quarter violated, without compromise and at any cost. It invites the practical cooperation of the Imperial German Government at this time when cooperation may accomplish most and this great common object be most strikingly and effectively achieved.

The Imperial German Government expresses the hope that this object may be in some measure accomplished even before the present war ends. It can be. The Government of the United States not only feels obliged to insist upon it by whomsoever violated or ignored, in the protection of its own citizens, but is also deeply interested in seeing it made practicable between the belligerents themselves, and holds itself ready at any time to act as the common friend who may be privileged to suggest a way.

In the meantime the very value which this Government sets upon the long and unbroken friendship between the people and Government of the United States and the people and Government of the German Nation, impels it to press very solemnly upon the Imperial German Government the necessity for a scrupulous observance of neutral rights in this critical matter. Friendship itself prompts it to say the Imperial Government that repetition by the Commanders of German naval vessels of acts in contravention of those rights must be regarded by the Government of the United States, when they affect American citizens, as deliberately unfriendly.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1944. Britische Antwortnote vom 23. Juli 1915 auf die Note des amerikanischen Botschafters in London vom 2. April 1915.

(**E. W. 2,** S. 179—181.)

Ambassador *W. H. Page* to the Secretary of State.

(Telegram.) American Embassy, London, July 24, 1915.

Following note, dated July 23, received from Sir *Edward Grey* this morning:

„On the 2nd April Your Excellency handed to me a copy of a communication containing the criticismus of the United States Government on the measures we have been constrained to take on account of the menace to peaceful commerce resulting from the German submarine policy. This communication has received the most careful consideration of His Majesty's Government

2. I fully appreciate the friendly spirit and the candour which are shown in the communication and, replying in the same spirit, I trust that I may be able to convince Your Excellency and also the administration at Washington that the measures we have announced are not only reasonable and necessary in themselves, but constitute no more than an adaptation of the old principles of blockade to the peculiar circumstances with which we are confronted.

3. I need scarcely dwell on the obligation incumbent upon the allies to take every step in their power to overcome their common enemy in view of the shocking violation of the recognized rules and principles of civilized warfare of which he has been guilty during the present struggle. Your Excellency's attention has already been drawn to some of these proceedings in the memorandum which I handed to you on the 19th February. Since that time Lord *Bryce's* report, based on evidence carefully sifted by legal experts, describing the atrocities committed in Belgium, the poisoning of wells in German Southwest Africa, the use of poisonous gases against the troops in Flanders, and finally the sinking of the „Lusitania" without any opportunity to passengers and noncombatants to save their lives, have shown how indispensable it is that we should leave unused no justifiable method of defending ourselves.

4. Your Excellency will remember that in my notes of the 13th 1 and the March I explained that the allied Governments intended to meet the German attempt to stop all supplies of every kind from leaving or entering British or French ports by themselves intercepting goods going to or from Germany. I read the communication from Your Excellency's Government not as questioning the necessity for our taking all the steps open to us to cripple the enemy's trade, but as directed solely to the question of the legitimacy of the particular measures adopted.

5. In the various notes which I have received from Your Excellency the right of a belligerent to establish a blockade of the enemy ports is admitted a right, which has obviously no value save in so far as it gives power to a belligerent to cut off the sea-borne exports and imports of his

enemy. The contention which I understand the United States Government now put forward is that if a belligerent is so circumstanced that his commerce can pass through adjacent neutral ports as easily as through ports in his own territory, his opponent has no right to interfere and must restrict his measures of blockade in such a manner as to leave such avenues of commerce still open to his adversary. This is a contention which His Majesty's Government feel unable to accept and which seems to them unsustainable either in point of law or upon principles of international equity. They are unable to admit that a belligerent violates any fundamental principle of international law by applying a blockade in such a way as to cut off the enemy's commerce with foreign countries through neutral ports if the circumstances render such an application of the principles of blockade the only means of making it effective. The Government of the United States indeed intimates its readiness to take into account „the great changes which have occurred in the conditions and means of naval warfare since the rules hitherto governing legal blockade were formulated", and recognizes that „the from of close blockade with its cordon of ships in the immediate offing of the blokkaded ports is no longer practicable in the face of an enemy possessing the means and opportunity to make an effective defense by the use of submarines, mines, and aircraft."

6. The only question then which can arise in regard to the measures resorted to for the purpose of carrying out a blockade upon these extended lines is whether, to use Your Excellency's words, they „conform to the spirit and principles of the essence of the rules of war"; and we shall be content to apply this test to the action which we have taken in so far as it has necessitated interference with neutral commerce.

7. It may be noted in this connection that at the time of the Civil War the United States found themselves under the necessity of declaring a blockade of some 3 000 miles of coast line, a military operation for which the number of vessels available was at first very small. It was vital to the cause of the United States in that great struggle that they should be able to cut off the trade of the Southern States. The Confederate Armies were dependent on supplies from over seas, and those supplies could not be obtained without exporting the cotton wherewith to pay for them. To cut off this trade the United States could only rely upon a blockade. The difficulties confronting the Federal Government were in part due to the fact that neigbouring neutral territory afforded convenient centres from which contraband could be introduced into the territory of their enemies and from which blockade running could be facilitated. Your Excellency will no doubt remember how, in order to meet this new difficulty, the old principles relating to contraband and blockade were developed and the doctrine of continuous voyage was applied and enforced under which goods destined for the enemy territory were intercepted before they reached the neutral ports from which they were to be reexported.

8. The difficulties which imposed upon the United States the necessity of reshaping some of the old rules are somewhat akin to those with which the allies are now faced in dealing with the trade of their enemy. Adjacent to Germany are various neutral countries which afford her convenient opportunities for carrying on her trade with foreign countries. Her own territories are covered by a network of railways and waterways, which enable her commerce to pass as conveniently through ports in such neutral countries as through her own. A blockade limited to enemy ports would leave open routes by which every kind of German commerce could pass almost as easily as through the ports in her own territory. Rotterdam is indeed the nearest outlet for some of the industrial districts of Germany.

9. As a counterpoise to the freedom with which one belligerent may send his commerce across a neutral country without compromising its neutrality, the other belligerent may fairly claim to intercept such commerce before it has reached, or after it has left, the neutral State, provided, of course, that he can establish that the commerce with which he interferes is the commerce of his enemy and not commerce which is bona fide destined for or proceeding from the neutral State. It seems, accordingly, that if it be recognized that a blockade is in certain cases the appropriate method of intercepting the trade of an enemy country, and if the blockade can only become effective by extending it to enemy commerce passing through neutral ports, such an extension is defensible and in accordance with principles which have met with general acceptance.

10. To the contention that such action is not directly supported by written authority, it may be replied that it is the business of writers on international law to formulate existing rules rather than to offer suggestions for their adaptation to altered circumstances, and Your Excellency will remember the unmeasured terms in which a group of prominent international lawyers of all nations condemned the doctrine which had been laid down by the Supreme Court of the United States in the case of the „Springbok“, a doctrine upheld by the Claims Commission at Washington in 1873. But the United States and the British Governments took a broader view and looked below the surface at the underlying principles, and the Government of this country, whose nationals were the sufferers by the extension and development of the old methods of blockade made by the United States during the Civil War, abstained from all protest against the decisions by which the ships and their cargoes were condemned.

11. What is really important in the general interest is that adaptations of the old rules should not be made unless they are consistent with the general principles upon which an admitted belligerent right is based. It is also essential that all unnecessary injury to neutrals should be avoided. With these conditions it may be safely affirmed that the steps we are taking to intercept commodities on their way to and from Germany fully comply. We are interfering with no goods with which we should not be entitled to interfere by blockade if the geographical position and the conditions of Germany at present were such that her commerce passed through her own ports. We are taking the utmost possible care not to interfere with commerce genuinely destined for or proceeding from neutral countries. Furthermore, we have tempered the severity with which our measures might press upon neutrals by not applying the rule which was invariable in the old form of blockade that ships and goods on their way to or from the blockaded area are liable to condemnation.

12. The communication made by the United States Embassy on the 2nd April describes as a novel and quite unprecedented feature of the blockade that it embraces many neutral ports and coasts and has the effect of barring access to them. It does not appear that our measures can be properly so described. If we are successful in the efforts we are making to distinguish between the commerce of neutral and enemy countries there will be no substantial interference with the trade of neutral ports except in so far as they constitute ports of access to and exit from the enemy territory. There are at this moment many neutral ports which it would be mere affectation to regard as offering facilities only for the commerce of the neutral country in which they are situated, and the only commerce with which we propose to interfere is that of the enemy who seeks to make use of such ports for the purposes of transit to or from his own country.

13. One of the earlier passages in Your Excellency's memorandum was to the effect that the sovereignty of neutral nations in time of war suffers no diminution except in so far as the practice and consent of civilized nations has limited it „by the recognition of certain now clearly determined rights", which it is considered may be exercised by nations at war; and these it defines as the right of capture and condemnation for unneutral service for the cerriage of contraband and for breach of blockade. I may, however, be permitted to point out that the practice of nations on each of the three subjects mentioned has not at any time been uniform or clearly determined, nor has the practice of any maritime nation always been consistent.

14. There are various particulars in which the exact method of carrying a blockade into effect has from time to time varied. The need of a public notification, the requisite standard of effectiveness, the locality of the blockading squadrons, the right of the individual ship to a preliminary warning that the blockade is in force, and the penalty to be inflicted on a captured blockade runner are all subjects on which different views have prevailed in different countries and in which the practice of particular countries has been altered from time to time. The one principle which is fundamental and has obtained universal recognition is that by means of blockade a belligerent is entitled to cut off by effective means the sea-borne commerce of his enemy.

15. It is the same with contraband. The underlying principle is well established, but as to the details there has been a wide variety of view. As for unneutral service—the very term is of such recent introduction that many writers of repute on international law do not even mention it. It is impossible in the view of His Majesty's Government in these circumstances to maintain that the right of a belligerent to intercept the commerce of his enemy is limited in the way suggested in Your Excellency's communication.

16. There are certain subsidiary matters dealt with in Your Excellency's communication to which I think it well to refer. Amongst these may be mentioned your citation of the Declaration of Paris, due no doubt to the words which occur in the memorandum sent by me to Your Excellency on the 1st March, wherein it was stated that the allied Governments would hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin, and to our announcement that vessels might be required to discharge goods of enemy ownership as well as those of enemy origin or destination.

17. It is not necessary to discuss the extent to which the second rule of the Declaration of Paris is affected by these measures or whether it could be held to apply at all as between Great Britain and the United States. In actual practice, however, we are not detainig goods on the sole ground that they are the property of an enemy. The purpose of the measures we are taking is to intercept commerce on its way from and to the enemy country. There are many cases in which proof that the goods were enemy property would afford strong evidence that they were of enemy origin or enemy destination, and it is only in such cases that we are detaining them. Where proof of enemy ownership would afford no evidence of such origin or destination we are not in practice detaining the goods.

18. His Majesty's Government have been gratified to observe that the measures which they are enforcing have had no detrimental effect on the commerce of the United States. Figures of recent months show that the increased opportunities afforded by the war for American commerce have more than compensated for the loss of the German and Austrian markets.

19. I trust that in the light of the above explanations it will be realized that the measures to which we have resorted have been not only

justified by the exigencies of the case, but can be defended as in accordance with general principles which have commended themselves to the Governments of both countries. I am glad to be able to assure Your Excellency that we shall continue to apply these measures with every desire to occasion the least possible amount of inconvenience to persons engaged in legitimate commerce.

I have, etc., *E. Grey.*"

Page.

Nr. 1945. Gerard an Lansing, 30. Juli 1915. Uebermittlung der deutschen Note über den „Frye"-Fall.

(**E. W. 2,** S. 187—188.)

(Telegram.) American Embassy, Berlin, July 30, 1915.

Following note received:

Foreign Office, Berlin, July 30, 1915.

The undersigned has the honor to inform His Excellency, Mr. *James W. Gerard,* Ambassador of the United States of America, in reply to the note of the 26th ultimo, Foreign Office No. 3990, on the subject of the sinking of the American merchant vessel „William P. Frye" by the German auxiliary cruiser „Prince Eitel Friedrich", that the points of view brought out in the note have been carefully examined by the Imperial German Government. This examination has led to the following conclusions:

The Government of the United States believes that it is incumbent upon it to take the position that the treaty rights to which America is entitled, as contained in Article 12 of the Prussian-American treaty of amity and commerce of September 10, 1785, in Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, were violated by the sinking of the „William P. Frye". It interprets these articles as meaning that a merchantman of the neutral contracting party carrying contraband can not in any circumstances be destroyed by a warship of the belligerent contracting party, and that the sinking of the „William P. Frye" was, therefore, in violation of the treaty, even if her cargo should have consisted of contraband, which it leaves outside of the discussion.

The German Government can not accept this view. It insists as heretofore that the commander of the German auxiliary cruiser acted in the legal exercise of the right of control of trade in contraband enjoyed by warships of belligerent nations, and that the treaty stipulations mentioned merely oblige the German Government to make compensation for the damage sustained by the American citizens concerned.

It is not disputed by the American Government that, according to general principles of of international law, a belligerent is authorized in sinking neutral vessels under almost any conditions for carrying contraband. As is well known, these principles were laid down in Articles 49 and 50 of the Declaration of London, and were recognized at that time by the duly empowered delegates of all the nations which participated in the conference, including the American delegates, to be declarative of existing international law (see preliminary clause of the Declaration of London); moreover, at the beginning of the present war, the American Government proposed to the belligerent nations to ratify the Declaration of London and give its provisions formal validity also.

The German Government has already explained in its note of April 4 last for what reasons it considers that the conditions justifying the sinking under international law were present in the case of the „William P. Frye".

The cargo consisted of conditional contraband, the destination of which for the hostile armed forces was to be presumed under the circumstances; no proof to overcome this presumption has been furnished. More than half the cargo of the vessel was contraband, so that the vessel was liable to confiscation. The attempt to bring the American vessel into a German port would have greatly imperiled the German vessel in the given situation of the war, and at any rate practically defeated the success of her further operations. Thus the authority for sinking the vessel was given according to general principles of international law.

There only remains then to be examined the question how far the Prussian-American treaty stipulations modify these principles of international law.

In this connection Article 12 of the treaty of 1785 provides that in the event of a war between one of the contracting parties with another power the free commerce and intercourse of the nationals of the party remaining neutral with the belligerent powers shall not be interrupted, but that on the contrary the vessel of the neutral party may navigate freely to and from the ports of the belligerent powers, even neutralizing enemy goods on board thereof. However, this article merely formulates general rules for the freedom of maritime intercourse and leaves the question of contraband untouched: the specific stipulations on this point are contained in the following article, which is materially indentical with Article 13 of the treaty of 1799 now in force.

The plain intention of Article 13 is to establish a reasonable compromise between the military interests of the belligerent contracting party and the commercial interests of the neutral party. On the one hand the belligerent party is to have the right to prevent the transportation of war supplies to his adversaries even when carried on vessels of the neutral party; on the other hand the commerce and navigation of the neutral party is to be interfered with as little as possible by the measures necessary for such prevention, and reasonable compensation is to be paid for any inconvenience or damage which may nevertheless ensue from the proceeding of the belligerent party.

Article 13 recites the following means whereby the belligerent party can prevent the vessels of the neutral party from carrying war supplies to his adversary. The detention of the ship and cargo for such lenght of time as the belligerent may think necessary; furthermore the taking over of the war stores for his own use, paying the full value of the same as ascertained at the place of destination. The right of sinking is not mentioned in the treaty and is therefore neither expressly permitted nor expressly prohibited, so that on this point the party stipulations must be supplemented by the general rules of international law. From the meaning and spirit of the treaty it really appears out of the question that it was intended to expect of the belligerent that he should permit a vessel loaded with contraband, for example a shipment of arms and ammunition of decisive importance for the outcome of the war, to proceed unhindered to his enemy when circumstances forbid the carrying of the vessel into port, if the general rules of international law allow sinking of the vessel.

The remaining stipulations of Article 13 must likewise be considered in this light; they provide that the captain of a vessel stopped shall be allowed to proceed on his voyage if he delivers out the contraband to the warship which stopped his vessel. For such delivering out can not of course be considered when the ensuing loss of time imperils either the warship herself or the success of her other operations. In the case of the „William P. Frye“ the German commander at first tried to have matters settled by the delivery of contraband, but convinced himself of the impracticability of this attempt in that it would expose his ship to attack by whatever superior

force of enemy war vessels pursuing him and was occordingly obliged to determine upon the sinking of the „Frye“. Thus he did not exceed on this point the limits to which he was bound by Article 13.

However, Article 13 asserts itself here to the extent that it founds the obligation to compensate the American citizens affected, whereas according to the general rules of international law the belligerent party does not need to grant compensation for a vessel lawfully sunk. For if, by Article 13, the mere exercise of right of highways makes the belligerent liable for compensation, this must apply a fortiori to the exercise of the right of sinking.

The question whether the German commander acted legally was primarily a subject for the consideration of the German prize courts according to general principles of international law as laid down; also in Article 1 of The Hague Convention for the establishment of an international prize court and in Article 51 of the Declaration of London. The German Government consequently laid the case of „William P. Frye“ before the competent prize court at Hamburg, as was stated in its note of the 7th ultimo. This court found by its judgment of the 10th instant that the cargo of the American vessel „William P. Frye“ was contraband, that the vessel could not be carried into port, and that the sinking was therefore justified; at the same time the court expressly recognized the validity of the Prussian-American treaty stipulations severally mentioned for the relations between the German Empire and America, so that the sinking of the ship and cargo, so far as American property, makes the German Empire liable for indemnity. The prize court was unable to fix the indemnity itself, since it had no data before it, failing the receipt of the necessary deteils from the parties interested.

It will now be necessary to settle these points in a different way. The German Government suggests as the simplest way that each of the two Governments designate an expert, and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her. The German Government will promptly pay the amount of indemnity thus ascertained; it expressly declares, however, reverting to what has been stated above, that this payment does not constitute satisfaction for the violation of American treaty rights. but a duty or policy of this Government founded on the existing treaty stipulations.

Should the American Government not agree to this manner of settling the matter, the German Government is prepared to submit the difference of opinion as being a question of the interpretation of the existing treaties between Germany and the United States to the tribunal at the Hague, pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

The undersigned begs to suggest that the Ambassador bring the above to the attention of his Government and avails himself, etc.

Gerard. *von Jagow.*

Nr. 1946. Page an Lansing, 31. Juli 1915. Uebermittlung der Note Greys vom gleichen Datum in Sachen der Prisen-Gerichtsbarkeit.

(**E. W. 2,** S. 181—182.)

American Embassy, London, Juli 31, 1915.

Your 1848, July 14, 5 p. m. I have to-day received the following note from Sir *Edward Grey*:

Foreign Office, Juli 31, 1915.

Your Excellency:

1. I have the honour to acknowledge the receipt of the note dated the 16th instant in which you were good enough to communicate to me for the

information of His Majesty's Government, the opinion held by the Government of the United States, that in view of differences which they understand to exist between the two countries as to the principles of law applicable in cases before the prize court, they could not recognize the validity of proceedings taken in His Majesty's prize court in derogation of the rights of citizens of the United States.

2. I do not understand to what divergence of views as to the principles of law applicable in cases before the prize court the Government of the United States refer, for I am not aware of any differences existing between the two countries as to the principles of law applicable in cases before such courts.

3. British prize courts, „According to the ancient form of commission under which they sit, are to determine cases which come before them according to the course of admiralty and the law of nations and the statutes, rules, and regulations for the time being in force in that behalf".

As to the principles applied by the American prize courts, I note that in the case of the „Amy Warwick" (2 Sprague, 123), it was held that prize courts are subject to the instructions of their own sovereign. In the absence of such instructions their jurisdiction and rules of decision are to be ascertained by reference to the known powers of such tribunals and the principles by which they are governed under the public law and the practice of nations. It would appear, therefore, that the principles applied by the prize courts of the two countries are identical.

4. As illustrating further the attitude adopted by the judges of British prize courts toward these two sources of law, the municipal legislation of its Sovereign on the one hand and the principles of International Law on the other, I should like to refer Your Excellency to a classical passage in the judgment of Lord *Stowell*, in the case of the Fox, in which that famous judge observed in the course of the discussion: „A question has been stated, what would be the duty of the court under Orders in Council, that were repugnant to the Law of Nations? It has been contended on one side that the court would at all events be found to enforce the Orders in Council, on the other that the court would be bound to apply the rule of the law of nations adapted to the particular case, in disregard of the Orders in Council. This court is bound to administer the law ol nations to the subjects of other countries in the different relations in which they may be placed toward this country and its Government. That is what others have a right to demand for their subjects and to complain if they receive it not. This is its unwritten law evidenced in the course of its decisions and collected from the common usage of civilized states. At the same time it is strictly true that by the Constitution of this country the King in Council possesses legislative rights over this court and has power to issue orders and instructions which it is bound to obey and enforce; and these constitute the written law of this court. These two propositions, that the court is bound to administer the law of nations, and that it is bound to enforce the King's Orders in Council, are not at all inconsistent with each other, because these orders and instructions are presumed to conform themselves, under the given circumstances, to the principles of its unwritten law. They are either directory applications of those principles to the cases indicated in them—cases which, with all the facts and circumstances belonging to them, and which constitute their legal character could be but imperfectly known to the court itself; or they are positive regulations, consistent with these principles, applying to matters which require more exact and definite rules than those general principles are capable of furnishing. The constitution of this court, relatively to the legislative power of the King in Council, is analogous to that of the courts of

common law relatively to that of the Parliament of this Kingdom. These courts have their unwritten law, the approved reasons, principles of natural reason and justice—they have likewise the written or statute law in acts of Parliament, which are directory applications of the same principles to particular subjects, or positive regulations consistent with them, upon matters which would remain too much at large if they were left to the imperfect information which the courts could extract from mere general speculations. What would be the duty of the individuals who preside in these courts, if required to enforce an act of Parliament which contradicted those principles, is a question which I presume they would not entertain a priori; because they will not entertain a priori, the supposition that any such will arise. In like manner this court will not let itself loose into speculations as to what would be its duty under such an emergency; because it can not, without extreme indecency, presume that any such emergency will happen. And it is the less disposed to entertain them because its own observation and experience attest the general conformity of such orders and instructions to its principles of unwritten law."

5. The above passage has recently been quoted and adopted by the president of the prize court in the case of the „Zamora", in which Sir *S. Evans* said: „I make bold to express the hope and belief that the nations of the world need not be apprehensive that Orders in Council will emanate from the Government of this country in such violation of the acknowledged laws of nations that it is conceivable that our prize tribunals, holding the law of nations in reverence, would feel called upon to disregard and refuse obedience to the provisions of such orders."

6. In the note which I handed to Your Excellency on the 23d Juli, I endeavored to convince the Government of the United States, and I trust with success, that the measures that we have felt ourselves compelled to adopt, in consequence of the numerous acts committed by our enemies in violation of the laws of war and the dictates of humanity are consistent with the principles of international law. The legality of these measures has not yet formed the subject of a decision of the price court; but I wish to take this oppurtunity of reminding Your Excellency that it is open to any United States citizen whose claim is before the prize court to contend that any Order in Council which may affect his claim is inconsistent with the principles of international law and is, therefore, not binding upon the court. If the prize court declines to accept his contentions, and if, after such a decision has been upheld on appeal by the Judicial Committee of His Majesty's Privy Council, the Government of the United States of America considers that there is serious ground for holding that the decision is incorrect and infringes the right of their citizens, it is open to them to claim that it should be subjected to review by an international tribunal.

7. This principle that the decisions of the national prize courts may properly be subjected to international review was conceded by Great Britain in Art. 7 of the Jay Treaty of 1793 and by the United States of America under the Treaty of Washington of 1871. Your Excellency will no doubt remember that certain cases (collectively known as the „Matamoros cases") were submitted to the commission established under Art. 12—17 of the Treaty of Washington. In each of these cases proceedings in prize had been instituted in the prize courts of the United States, and in each case the judgment of the Supreme Court, the court of last resort, in cases of prize had been obtained, the United States filed a demurrer in these cases, alleging that as they had been heard by the prize courts of the United States of original and appellate jurisdiction, the decision of the appellate court was final and no claim based upon it could be made before the commission. The

demurrer was unanimously overruled and the cases heard, and the agent of the United States, in his report of the proceedings of the commission, stated that he personally „maintained no doubt of the jurisdiction of the commission as an international tribunal to review the decisions of the prize courts of the United States, where the parties alleging themselves aggrieved had prosecuted their claims by appeals to the court of last resort, as this jurisdiction, however, had been sometimes questioned, he deemed it desirable that a formal adjudication by the commission should be had upon this question."

8. The same principle was accepted both by the United States Government and His Majesty's Government in 1907 in connection with the proposed establishment of an international prize court, although certain constitutional difficulties have led the United States Government to propose that the right of recourse to the international prize court in connection with a decision of the Supreme Court of the United States should take the form of a direct claim for compensation.

9. It is clear, therefore, that both the United States Government and His Majesty's Government have adopted the principle that the decisions of a national prize court may be open to review if it is held in the prize court and in the Judicial Committee of the Privy Council on appeal that the orders and instructions issued by His Majesty's Government in matters relating to prize are in harmony with the principles of international law; and should the Government of the United States, unfortunately, feel compelled to maintain a contrary view, His Majesty's Government will be prepared to concert with the United States Government in order to decide upon the best way of applying the above principle to the situation which would then have arisen. I trust, however, that the defense of our action, which I have already communicated to Your Excellency, and the willingness of His Majesty's Government (which has been shown in so many instances) to make reasonable concessions to American interests, will prevent the necessity for such action arising.

10. In any case, I trust that the explanations given above will romove the misapprehension under which I can not but feel the Government of the United States are labouring as to the principles applied by British prize courts in dealing with the cases which come before them.

I have, etc., *E. Grey.*

Page.

Nr. 1947. Lansing an Gerard, 10. August 1915. Amerikanische Note an Deutschland über die Schadenersatzansprüche im „Frye"-Falle.

(**E. W. 2,** S. 188—189.)

Department of State, Washington, August 10, 1915.

You are instructed to present the following note to the German Minister for Foreign Affairs:

Under instructions from my Government, I have the honor to inform Your Excellency, in reply to your note of July 30 in regard to the claim for reparation for the sinking of the „William P. Frye", that the Government of the United States learns with regret that the objections urged by it against the submission of this case to the prize court for decision have not commended themselves to the Imperial German Government, and it equally regrets that the reasons presented by the Imperial German Government for submitting this case to the prize court have failed to remove the objections of the Government of the United States to the adoption of that

course. As this disagreement has been reached after the full presentation of the views of both Governments in our previous correspondence, a further exchange of views on the questions in dispute would doubtless be unprofitable, and the Government of the United States therefore welcomes Your Excellency's suggestion that some other way should be found for settling this case.

The two methods of settlement proposed as alternative suggestions in Your Excellency's note have been given careful consideration, and it is believed that if they can be combined so that they may both be adopted, they will furnish a satisfactory basis for the solution of the questions at issue.

The Government of the United States has already expressed its desire that the question of the amount of indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the „Frye" should be settled by diplomatic negotiation, and it entirely concurs with the suggestion of the Imperial German Government that the simplest way would be to agree, as proposed in your note, „that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her", to be paid by the Imperial German Government when ascertained as stated in your note. It is assumed that the arrangement will include some provision for calling in an umpire in case the experts fail to agree.

The Government of the United States notes that your suggestion is made with the express reservation that a payment under this arrangement would not constitute an admission that American treaty rights had been violated, but would be regarded by the Imperial German Government merely as fulfilling a duty or policy founded on existing treaty stipulations. A payment made on this understanding would be entirely acceptable to the Government of the United States, provided that the acceptance of such payment should likewise be understood to be without prejudice to the contention of the Government of the United States that the sinking of the „Frye" was without legal justification, and provided also that an arrangement can be agreed upon for the immediate submission to arbitration of the question of legal justification, in so far as it involves the interpretation of existing treaty stipulations.

There can be no difference of opinion between the two Governments as to the desirability of having this question of the true intent and meaning of their treaty stipulations determined without delay, and to that end the Government of the United States proposes that the alternative suggestion of the Imperial German Government also be adopted, so that this question of treaty interpretation can be submitted forthwith to arbitration pursuant to article 38 of The Hague Convention for the pacific settlement of international disputes.

In this way both the question of indemnity and the question of treaty interpretation can promptly be settled, and it will be observed that the only change made in the plan proposed by the Imperial German Government is that instead of eliminating either one of its alternative suggestions, they are both given effect in order that both of the questions under discussion may be dealt with at the same time.

If this proposal proves acceptable to the Imperial German Government, it will be necessary also to determine whether, pending the arbitral award, the Imperial German Government shall govern its naval operations in accordance with its own interpretation, or in accordance with the interpretation maintained by the United States, as to the obligations imposed by their treaty stipulations, and the Government of the United States would be glad to have an expression of the views of the Imperial German Government on this point. *Lansing.*

Nr. 1948. Amerikanische Antwortnote vom 12. August 1915 auf die österreichisch-ungarische Note vom 29. Juni 1915 über die Lieferung von Munition an Kriegführende*).

(**E. W. 2,** S. 194—198.)

(Telegram.) Department of State, Washington, August 12, 1915.

Please present a note to the Royal Foreign Office in reply to its note of June 29, in the following sense:

The Government of the United States has given careful consideration to the statement of the Imperial and Royal Government in regard to the exportation of arms and ammunition from the United States to the countries at war with Austria-Hungary and Germany. The Government of the United States notes with satisfaction the recognition by the Imperial and Royal Government of the undoubted fact that its attitude with regard to the exportation of arms and ammunition from the United States is prompted by its intention to „maintain the strictest neutrality and to conform to the letter of the provisions of international treaties", but is surprised to find the Imperial and Royal Government implying that the observance of the strict principles of the law under the conditions which have developed in the present war is insufficient, and asserting that this Government should go beyond the long recognized rules governing such traffic by neutrals and adopt measures to „maintain an attitude of strict parity with respect to both belligerent parties".

To this assertion of an obligation to change or modify the rules of international usage on account of special conditions the Government of the United States can not accede. The recognition of an obligation of this sort, unknown to the international practice of the past, would impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy. The contention of the Imperial and Royal Government appears to be that the advantages gained to a belligerent by its superiority on the sea should be equalized by the neutral powers by the establishment of a system of nonintercourse with the victor. The Imperial and Royal Government confines its comments to arms and ammunition, but if the principle for which it contends is sound, it should apply with equal force to all articles of contraband. A belligerent controlling the high seas might possess an ample supply of arms and ammunition, but be in want of food and clothing. On the novel principle that equalization is a neutral duty, neutral nations would be obligated to place an embargo on such articles because one of the belligerents could not obtain them through commercial intercourse.

But if this principle, so strongly urged by the Imperial and Royal Government, should be admitted to obtain by reason of the superiority of a belligerent at sea, ought it not to operate equally as to a belligerent superior on land? Applying this theory of equalization, a belligerent who lacks the necessary munitions to contend successfully on land ought to be permitted to purchase them from neutrals, while a belligerent with an abundance of war stores or with the power to produce them should be debarred from such traffic.

Manifestly the idea of strict neutrality now advanced by the Imperial and Royal Government would involve a neutral nation in a mass of perplexities which would obscure the whole field of international obligation, produce

*) Ueberreicht am 16. August 1915. Herausgeber.

economic confusion, and deprive all commerce and industry of legitimate fields of enterprise, already heavily burdened by the unavoidable restrictions of war.

In this connection it is pertinent to direct the attention of the Imperial and Royal Government to the fact that Austria-Hungary and Germany, particularly the latter, have during the years preceding the present European war produced a great surplus of arms and ammunition, which they sold throughout the world and especially to belligerents. Never during that period did either of them suggest or apply the principle now advocated by the Imperial and Royal Government.

During the Boer War between Great Britain and the South African Republics the patrol of the coasts of neighboring neutral colonies by British naval vessels prevented arms and ammunitions reaching the Transvaal or the Orange Free State. The allied Republics were in a situation almost identical in that respect with that in which Austria-Hungary and Germany find themselves at the present time. Yet, in spite of the commercial isolation of one belligerent, Germany sold to Great Britain, the other belligerent, hundreds of thousands of kilos of explosives, gunpowder, cartridges, shot, and weapons; and it is known that Austria-Hungary also sold similar munitions to the same purchaser, though in smaller quantities. While, as compared with the present war, the quantities sold were small (a table of the sales in appended), the principle of neutrality involved was the same. If at that time Austria-Hungary and her present ally had refused to sell arms and ammunition to Great Britain on the ground that to do so would violate the spirit of strict neutrality, the Imperial and Royal Government might with greater consistency and greater force urge its present contention.

It might be further pointed out that during the Crimean War large quantities of arms and military stores were furnished to Russia by Prussian manufacturers; that during the recent war between Turkey and Italy, as this Government is advised, arms and ammunition were furnished to the Ottoman Government by Germany; and that during the Balkan wars the belligerents were supplied with munitions by both Austria-Hungary and Germany. While these latter cases are not analogous, as is the case of the South African War, to the situation of Austria-Hungary and Germany in the present war, they nevertheless clearly indicate the long-established practice of the two Empires in the matter of trade in war supplies.

In view of the foregoing statements, this Government is reluctant to believe that the Imperial and Royal Government will ascribe to the United States a lack of impartial neutrality in continuing its legitimate trade in all kinds of supplies used to render the armed forces of a belligerent efficient, even though the circumstances of the present war prevent Austria-Hungary from obtaining such supplies from the markets of the United States, which have been and remain, so far as the action and policy of this Government are concerned, open to all belligerents alike.

But, in addition to the question of principle, there is a practical and substantial reason why the Government of the United States has from the foundation of the Republic to the present time advocated and practiced unrestricted trade in arms and military supplies. It has never been the policy of this country to maintain in time of peace a large military establishment or stores of arms and ammunition sufficient to repel invasion by a well-equipped and powerful enemy. It has desired to remain at peace with all nations and to avoid any appearance of menacing such peace by the threat of its armies and navies. In consequence of this standing policy the United States would, in the event of attack by a foreign power, be at the outset of the war seriously, if not fatally, embarrassed by the lack of

arms and ammunition and by the means to produce them in sufficient quantities to supply the requirements of national defense. The United States has always depended upon the right and power to purchase arms and ammunition from neutral nations in case of foreign attack. This right, which it claims for itself, it can not deny to others.

A nation whose principle and policy it is to rely upon international obligations and international justice to preserve its political and territorial integrity might become the prey of an aggressive nation whose policy and practice it is to increase its military strength during times of peace with the design of conquest, unless the nation attacked can, after war had been declared, go into the markets of the world and purchase the means to defend itself against the aggressor.

The general adoption by the nations of the world of the theory that neutral powers ought to prohibit the sale of arms and ammunition to belligerents would compel every nation to have in readiness at all times sufficient munitions of war to meet any emergency which might arise and to erect and maintain establishments for the manufacture of arms and ammunition sufficient to supply the needs of its military and naval forces throughout the progress of a war. Manifestly the application of this theory would result in every nation becoming an armed camp, ready to resist aggression and tempted to employ force in asserting its rights rather than appeal to reason and justice for the settlement of international disputes.

Perceiving, as it does, that the adoption of the principle that it is the duty of a neutral to prohibit the sale of arms and ammunition to a belligerent during the progress of a war would inevitably give the advantage to the belligerent which had encouraged the manufacture of munitions in time of peace and which had laid in vast stores of arms and ammunition in anticipation of war, the Government of the United States is convinced that the adoption of the theory would force militarism on the world and work against that universal peace which is the desire and purpose of all nations which exalt justice and righteousness in their relations with one another.

The Government of the United States in the foregoing discussion of the practical reason why it has advocated and practiced trade in munitions of war, wishes to be understood as speaking with no thought of expressing or implying any judgment with regard to the circumstances of the present war, but as merely putting very frankly the argument in this matter which has been conclusive in determining the policy of the United States.

While the practice of nations, so well illustrated by the practice of Austria-Hungary and Germany during the South African War, and the manifest evil which would result from a change of that practice render compliance with the suggestions of the Imperial and Royal Government out of the question, certain assertions appearing in the Austro-Hungarian statement as grounds for its contentions can not be passed over without comment. These assertions are substantially as follows: (1) That the exportation of arms and ammunition from the United States to belligerents contravenes the preamble of The Hague Convention No. 13 of 1907; (2) that it is inconsistent with the refusal of this Government to allow delivery of supplies to vessels of war on the high seas; (3) that, „according to all authorities on international law who concern themselves more properly with the question", exportation should be prevented „when this traffic assumes such a form or such dimensions that the neutrality of a nation becomes involved thereby".

As to the assertion that the exportation of arms and ammunition contravenes the preamble of The Hague Convention No. 13 of 1907, this Government presumes that reference is made to the last paragraph of the preamble, which is as follows: „Seeing that, in this category of ideas, these

rules should not, in principle, be altered, in the course of the war, by a neutral power, except in a case where experience has shown the necessity for such change for the protection of the rights of that power".

Manifestly the only ground to change the rules laid down by the Convention, one of which, it should be noted, explicitly declares that a neutral is not bound to prohibit the exportation of contraband of war, is the necessity of a neutral power to do so in order to protect its own rights. The right and duty to determine when this necessity exists rests with the neutral, not with a belligerent. It is discretionary, not mandatory. If a neutral power does not avail itself of the right, a belligerent is not privileged to complain, for in doing so it would be in the position of declaring to the neutral power what is necessary to protect that power's own rights. The Imperial and Royal Government can not but perceive that a complaint of this nature would invite just rebuke.

With reference to the asserted inconsistency of the course adopted by this Government in relation to the exportation of arms and ammunition and that followed in not allowing supplies to be taken from its ports to ships of war on the high seas, it is only necessary to point out that the prohibition of supplies to ships of war rests upon the principle that a neutral power must not permit its territory to become a naval base for either belligerent. A warship may, under certain restrictions, obtain fuel and supplies in a neutral port once in three months. To permit merchant vessels acting as tenders to carry supplies more often than three months and in unlimited amount would defeat the purpose of the rule and might constitute the neutral territory a naval base. Furthermore, this Government is unaware that any Austro-Hungarian ship of war has sought to obtain supplies from a port in the United States, either directly or indirectly. This subject has, however, already been discussed with the Imperial German Government, to which the position of this Government was fully set forth December 24, 1914.

In view of the positive assertion in the statement of the Imperial and Royal Government as to the unanimity of the opinions of text-writers as to the exportation of contraband being unneutral, this Government has caused a careful examination of the principal authorities on international law to be made. As a result of this examination it has come to the conclusion that the Imperial and Royal Government has been misled and has inadvertently made an erroneous assertion. Less than one-fifth of the authorities consulted advocate unreservedly the prohibition of the export of contraband. Several of those who constitute this minority admit that the practice of nations has been otherwise. It may not be inopportune to direct particular attention to the declaration of the German authority, *Paul Einicke,* who states that at the beginning of a war, belligerents have never remonstrated against the enactment of prohibitions on trade in contraband, but adds „that such prohibitions may be considered as violations of neutrality, or at least as unfriendly acts, if they are enacted during a war with the purpose to close unexpectedly the sources of supply to a party which heretofore had relied on them".

The Government of the United States deems it unnecessary to extend further at the present time a consideration of the statement of the Austro-Hungarian Government. The principles of international law, the practice of nations, the national safety of the United States and other nations without great military and naval establishments, the prevention of increased armies and navies, the adoption of peaceful methods for the adjustment of international differences, and, finally, neutrality itself are opposed to the prohibition by a neutral nation of the exportation of arms, ammunition, or other munitions of war to belligerent powers during the progress of the war.

Lansing.

Appendix.

German Exports of Arms and Ammunition to Great Britain.

Articles	Quantity, 100 kilos			
	1899	1900	1901	1902
Explosives	4,342	6,014	5,147	3,645
Gumpowder	28	658	243	69
Gun barrels	12	366	21	133
Shot, of malleable iron, not polished, etc. . .	30	43	38	—
Shot (further manufactured), polished etc., not lead coated	—	4	—	—
Shot, nickeled or lead coated with copper rings, etc.	—	3,018	176	—
Weapons for war purposes	—	—	18	2
Cartridges with copper shells and percussion caps	904	1,595	866	982

Austro-Hungarian Exports of Arms and Ammunition to Great Britain.

Articles	Quantity, 100 kilos			
	1899	1900	1901	1902
Arms, exclusive of small arms	190	374	12	—
Separate parts of arms	1	1	—	—
Small arms	2	3	80	5
Ammunition and explosives under tariff No. 346	1	7	16	51
Other ammunition and explosives	—	—	4	—

Nr. 1949. Bericht vom 19. August 1915 des amerikanischen Botschafters Page an den Staatssekretär Lansing über die Versenkung des englischen Dampfers „Arabic"*) durch ein deutsches U-Boot.

(**E. W. 3****), S. 199.)

American Embassy, London, August 19, 1915.

Mr. *Page* informs Mr. *Lansing* that he has just received word that the steamer „Arabic" of the White Star Line was torpedoed at nine o'clock this morning and sank in eleven minutes. He reports that fifteen lifeboats from the vessel are proceeding to Liverpool, and that he will send details of the incident as soon as possible.

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*) Eidliche Aussagen und Berichte zum „Arabic"-Fall finden sich **E. W. 3**, S. 199—215, 219—226. Herausgeber.

) **European War No. 3. [Printed and distributed August 12, 1916.] Department of State. Diplomatic correspondence with belligerent governments relating to neutral rights and duties. Washington, Government Printing Office, 1916. (Angeführt als **E. W. 3.**) Herausgeber.

Nr. 1950. Der deutsche Botschafter an Lansing, 24. August 1915. Mitteilung über den Untergang der „Arabic“.

(**E. W. 3,** S. 203.)

New York, August 24, 1916.

I am instructed by my government to communicate the following to you: „So far no official information about the sinking of the „Arabic“ is available. The Imperial Government trusts that the Government of the United States will not take a definite stand after only hearing the reports coming from one side, which, according to the opinion of my government, cannot possibly correspond with the facts, but will give the Imperial Government a chance to be heard equally. Although my government does not doubt the good faith of the witnesses whose statements have been published by the newspapers in Europe my government thinks that it should be borne in mind that such statements have naturally been made in great excitement which might easily produce a wrong impression. In case Americans should actually have lost their life this would naturally be contrary to the intention of the German Government, who would deeply regret this fact and has instructed me to extend its sincerest sympathy to the Government of the United States“. May I ask you to be good enough to publish the above or to kindly let me know whether you agree to my publishing it?

J. Bernstorff.

Nr. 1951. Deutsche Note vom 7. September 1915 an Amerika. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin.

(**A. A. U.***) Nr. 12.)

American Embassy, Berlin, September 7, 1915.

Foreign Office sends me the following report of the sinking of the „Arabic“, with the request that it be brought to the knowledge of the American Government:

„On the 19th of August a German submarine stopped the English steamer „Dunsley“ about 60 nautical miles south of Kinsale and was on the point of sinking the prize by gun fire after the crew had left the vessel. At this moment the commander saw a large steamer making directly toward him. This steamer, which, as developed later, was identical with the „Arabic“, was recognized as an enemy vessel, as she did not fly any flag and bore no neutral markings. When she approached she altered her original course, but then again pointed directly toward the submarine. From this the commander became convinced that the steamer had the intention of attacking and ramming him. In order to anticipate this attack he gave orders to have the submarine submerge and fired a torpedo at the steamer. After firing he convinced himself that the people on board were being rescued in 15 boats.

„According to his instructions the commander was not allowed to attack the „Arabic“ without warning and without saving lives unless the ship attempted to escape or offered resistance. He was forced to conclude from the attendant circumstances that the „Arabic“ planned a violent attack on the submarine. This conclusion was all the more obvious, as he had been fired upon at a great distance in the Irish Sea on August 14 — that is, a

*) S. auch **E. W. 3,** S. 215—216. Herausgeber.

few days before — by a large passenger steamer apparently belonging to the British Royal Mail Steam Packet Company, which he had neither attacked or stopped.

„The German Government most deeply regrets that lives were lost through the action of the commander. It particularly expresses this regret to the Government of the United States on account of the death of American citizens. The German Government is unable, however, to acknowledge any obligation to grant indemnity in the matter, even if the commander should have been mistaken as to the aggressive intentions of the „Arabic". If it should prove to be the case that it is impossible for the German and the American Government to reach a harmonious opinion on this point, the German Government would be prepared to submit the difference of opinion as being a question of international law to The Hague tribunals, pursuant to article 38 of The Hague Convention for the pacific settlement of international disputes. In so doing it assumes that as a matter of course the arbitral decision shall not be admitted to have the importance of a general decision on the permissibility or the converse under international law of German submarine warfare.

Berlin, September 7, 1915". *Gerard.*

Nr. 1952. Lansing an den amerikanischen Botschafter Penfield in Wien, 8. September 1915. Anweisung zur Ueberreichung der amerikanischen Note über das Ersuchen zur Abberufung des österreichisch-ungarischen Botschafters Dumba.

(**E. W. 3,** S. 321.)

Department of State, Washington, September 8, 1915.

You are instructed to present immediately the following in a note to the Foreign Office:

„Mr. *Constantin Dumba,* the Austro-Hungarian Ambassador at Washington, has admitted that he proposed to his Government plans to instigate strikes in American manufacturing plants engaged in the production of munitions of war. The information reached this Government through a copy of a letter of the Ambassador to his Government. The bearer was an American citizen named Archibald, who was traveling under an American passport. The Ambassador has admitted that he employed Archibald to bear official despatches from him to his Government.

By reason of the admitted purpose and intent of Mr. *Dumba* to conspire to cripple legitimate industries of the people of the United States and to interrupt their legitimate trade, and by reason of the flagrant violation of diplomatic propriety in employing an American citizen protected by an American passport as a secret bearer of official despatches through the lines of the enemy of Austria-Hungary, the President directs me to inform your Excellency that Mr. *Dumba* is no longer acceptable to the Government of the United State as the Ambassador of His Imperial Majesty at Washington.

Believing that the Imperial and Royal Government will realize that the Government of the United States has no alternative but to request the recall of Mr. *Dumba* on account of his improper conduct, the Government of the United States expresses its deep regret that this course has become necessary and assures the Imperial and Royal Government that it sincerely desires to continue the cordial and friendly relations which exist between the United States and Austria-Hungary". *Lansing.*

Nr. 1953. Lansing an Gerard, 14. September 1915. Uebermittelung eines zusammenfassenden Berichts in Sachen des Falles „Arabic" mit der Anweisung, ihn dem deutschen Auswärtigen Amt zu übergeben.

(**E. W. 3,** S. 216—217.)

Department of State, Washington, September 14, 1915.

You are instructed to deliver to the Foreign Office the following summary of the evidence on file in the Department in regard to the sinking of the „Arabic".

1. It is generally agreed that the course of the „Arabic" drew her nearer to the „Dunsley" from the time the „Dunsley" and „Arabic" sighted each other until about the time the „Arabic" was torpedoed. (Affidavits of Master, First, Second, and Third Officers, Mess steward and seamen of „Dunsley"; affidavits of Captain and Second Officer of the „Arabic"; unsworn statements of three American passengers.) The Officers of the „Dunsley" agree that the „Arabic" altered her course somewhat toward the „Dunsley", but that her course was variable or zig-zag. (Affidavits of Master, 1st, 2d, and 3d officers and Mess Steward and one Seaman of the „Dunsley"; affidavits of Captain and 2nd officer of „Arabic"; affidavit of one American passenger.) The Third officer stated that the „Arabic" began the zig-zag course four miles away from the „Dunsley". Though the „Arabic" at times necessarily pointed toward the „Dunsley", at the time the torpedo struck she was moving away from the „Dunsley". (Affidavit of Captain and Second Officer of „Arabic", third officer of „Dunsley", and one passenger of unknown nationality and unsworn statement of one American passenger.)

2. The passengers on the „Arabic" variously estimated that the „Arabic" approached the „Dunsley" to within one to five miles. (Affidavits of 3 American passengers; unsworn statements of three American passengers and one passenger of unknown nationality.) While the „Dunsley" was sighted several miles away, the officers of that vessel estimated that the „Arabic" approached to one and a half to three miles from the „Dunsley". (Affidavits of Master, 1st and 2nd officers.) And one „Dunsley" Seaman swore the first distance was only one half mile. The affidavits of the Captain and the 2nd Officer of the „Arabic" agree that the „Arabic" did not approach nearer than two miles to the „Dunsley".

3. It appears that the submarine after shelling the „Dunsley" and after sighting the „Arabic" hid behind the „Dunsley" and submerged before the explosion of the torpedo which sank the „Arabic". (Affidavits of Master, 1st and 2nd officers, mess steward, and one seaman of „Dunsley".)

4. Witnesses are in agreement that the submarine was not seen from the „Arabic" (affidavits of the Captain and 2nd Officer of the „Arabic", affidavits of 3 American passengers and unsworn statement of passenger of unknown nationality), and that the „Arabic" could not have seen the submarine from its position behind the „Dunsley" prior to submerging. (Affidavit of 2nd Officer of the „Dunsley".)

5. All agree that the „Arabic" received no warning. (Affidavits of 6 American passengers and two passengers of unknown nationality, and the unsworn statements of four American passengers and two passengers of unknown nationality, and the affidavits of Captain and 2nd Officer of the „Arabic".)

6. The torpedo was first seen by the passengers at an estimated distance of 150 to 300 yards away. (Affidavit of passenger of unknown nationality; unsworn statements of two American passengers and one passenger of unknown

nationality.) The Captain of the „Arabic“, however, swears that the air bubbles and the torpedo were only 300 feet away when he saw them. (It appears that Consul Washington at Liverpool, in conversation with Captain Finch and the Second Officer of the „Arabic“, learned that they saw bubbles of air at the time they first noticed the torpedo, which were taken to indicate the air escaping at the time the torpedo was expelled from the tube, and that therefore the submarine was supposed to have been only 300 feet from the „Arabic“ and about 2 miles from the „Dunsley“ when the torpedo was fired. Consul Washington's three telegraphic reports of August 24th.)

7. All agree that the torpedo struck the „Arabic“ near the stern on the starboard side. (Affidavit of Captain, 2nd officer of „Arabic“, Captain and 2nd officer of „Dunsley“, and two American passengers and a passenger of unknown nationality, and unsworn statement of one American passenger.)

From a diagram made by the Second Officer of the „Arabic“, who observed the approach of the torpedo from the navigating bridge, the course of the torpedo was almost at right angles to the course of the „Arabic“.

Nr. 1954. Gerard an Lansing, 20. September 1915. Uebermittelung der deutschen Note vom 19. September 1915 zum „William P. Frye“-Fall.

(**E. W. 3,** S. 311—312.)

American Embassy, Berlin, September 20, 1915.

Following note received from the Foreign Office to-day:

„Foreign Office, Berlin, September 19, 1915.

„The undersigned has the honor to make the following reply to the note of His Excellency, Mr. *James W. Gerard,* Ambassador of the United States of America, dated 13th ultimo, on the subject of the claim for reparation for the sinking of the American merchantman „William P. Frye“.

„With regard first to the ascertainment of the damages by experts the German Government believes that it should dispense with the nomination of an umpire. In the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral Government from similar causes the experts named by the two parties have always reached an agreement as to the amount of the damage without difficulty; should it not be possible, however, to reach an agreement on some point, it could probably be settled by diplomatic negotiation. Assuming that the American Government agrees to this, the German Government names as its expert Doctor *Kepny,* of Bremen, director of the North German Lloyds; it begs to await the designation of the American expert.

„The German Government declares that it agrees to the proposal of the American Government to separate the question of indemnity from the question of the interpretation of the Prussian-American treaties of 1785, 1799, and 1828. It therefore again expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the American side, but it will admit that the settlement of the question of indemnity does not prejudice the arrangement of the difference of opinion concerning the interpretation of the treaty rights, and that this dispute is left to be decided by The Hague tribunal of arbitration.

„The negotiations relative to the signing of the compromis provided by Article 52 of The Hague Arbitration Convention would best be conducted between the Foreign Office and the American Embassy in Berlin in view of

the difficulties in the way of instructing the Imperial Ambassador at Washington. In case the American Government agrees, the Foreign Office is prepared to submit to the Embassy a draft of such a compromis.

„The American Government's inquiry whether the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question pending the arbitral proceedings has been carefully considered by German Government. From the standpoint of law and equity it is not prevented in its opinion from proceeding against American ships carrying contraband according to its interpretation until the question is settled by arbitration. For the German Government does not need to depart from the application of generally recognized rules of the law of maritime war, as the Declaration of London, unless and in so far as an exception based on a treaty, is established beyond all doubt; in the case of the present difference of opinion between the German and the American Governments such an exception could not be taken to be established except on the ground of the arbitral award. Moreover, the disadvantages to Germany which would ensue from the American interpretation of the treaty stipulations would be so much greater as to be out of proportion to those which the German interpretation would entail for the United States. For whereas the American interpretation would materially impede Germany in her conduct of warfare, hardly any particular disadvantage to American citizens would result from the German interpretation, since they receive full reparation for any property damage sustained.

„Nevertheless the German Government, in order to furnish to the American Government evidence of its conciliatory attitude, has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand, it must reserve to itself the right to destroy vessels carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London.

„The undersigned begs to suggest that the Ambassador bring the above to the knowledge of his Government, and avails himself of the opportunity to renew, etc.

von Jagow."

Gerard.

Nr. 1955. Oesterreichisch-ungarische Antwort vom 24. September 1915 auf die amerikanische Note vom 16. August 1915 in Sachen der Lieferung von Munition an Kriegführende. (Norddeutsche Allgemeine Zeitung, Nr. 268 vom 27. September 1915.)

Wien, 24. September 1915.

„Der Unterzeichnete hat die Ehre gehabt, die sehr geschätzte Note vom 16. August d. J. Nr. 2758 zu erhalten, mit welcher es Seiner Exzellenz dem Herrn außerordentlichen und bevollmächtigten Botschafter der Vereinigten Staaten von Amerika *Frederic Courtland Penfield* gefällig war, die Stellung zu kennzeichnen, welche die Regierung der Vereinigten Staaten von Amerika gegenüber dem von der k. und k. Regierung in der Frage der Lieferung von Kriegsbedarf an Großbritannien und dessen Verbündete vertretenen Standpunkt einnimmt. Die Darlegungen, welche das Washingtoner Kabinett dieser Frage gewidmet hat, lassen die verschiedenen Gesichtspunkte erkennen, die

für die Bundesregierung in der Angelegenheit maßgebend sind, und die es ihr nach ihrer Meinung verwehren, den von der k. und k. Regierung geltend gemachten Anschauungen Rechnung zu tragen. So sehr es sich auch die k. und k. Regierung hat angelegen sein lassen, die vom Washingtoner Kabinett ins Treffen geführten Momente eingehend zu prüfen, so vermag gleichwohl deren sorgfältigste Wägung und Wertung sie zu einem Abgehen von dem Standpunkt nicht zu bestimmen, wie er in der Note vom 29. Juni d. J. Nr. 59 465 auseinandergesetzt erscheint.

Die Ausführungen der Bundesregierung beruhen zum großen Teil auf der nicht zutreffenden Voraussetzung, als hätte die k. und k. Regierung die in Artikel 7 der V. und der XIII. Haager Konvention den Angehörigen neutraler Mächte eingeräumte Befugnis, den Kriegführenden Konterbande zu liefern, überhaupt in Abrede gestellt, während doch die vorerwähnte Note der k. und k. Regierung ausdrücklich besagt hatte, daß der Wortlaut — aber auch nur dieser — der bezogenen Bestimmung der Bundesregierung eine formale Handhabe zur Duldung des von ihren Bürgern gegenwärtig betriebenen Handels mit Kriegsmaterial biete. Der k. und k. Regierung lag selbstverständlich fern, dem Washingtoner Kabinett ein Abgehen von einem geltenden Vertrag anzusinnen; sie wies nur darauf hin, daß nach ihrem Dafürhalten jener Bestimmung nicht eine Auslegung gegeben werden sollte, die mit dem Grundgedanken und den obersten Grundsätzen des Neutralitätsrechts in Widerspruch geriete. Allerdings entsteht aus der fortschreitenden Kodifizierung des Völkerrechts die Gefahr, daß die in schriftlichen Vereinbarungen niedergelegten Rechtssätze als das Um und Auf des Völkerrechts angesehen und darüber dessen allgemeine Grundgedanken, soweit sie noch nicht in Staatsverträgen ausdrücklich fixiert worden sind, übersehen werden. Dieser Möglichkeit sollte jedoch gerade in bezug auf die Materie des Neutralitätsrechtes vorgebeugt werden, und in diesem Sinne erscheint in Préambule der XIII. Haager Konvention (2. u. 3. Absatz) betont, daß die Stipulationen dieses Abkommens lediglich Fragmente darstellen, die nicht allen Umständen, wie sie sich in der Praxis ergeben können, Rechnung tragen und ihr Korrektiv bezw. Ergänzung finden in den allgemeinen Prinzipien des internationalen Rechts.

Die k. und k. Regierung hat denn auch ihre einschlägigen Darlegungen auf das spezielle Problem eingestellt, ob die zitierte Vertragsbestimmung nicht an diesen Prinzipien ihre Schranke finde, und sie hat, als sie sich bei Bejahung der Frage auf die Stimmen der Wissenschaft berief, eben nur jene Autoritäten im Auge gehabt und im Auge haben können, welche speziell untersuchen, ob die sonst zulässige Ausfuhr von Kriegsbedarf nicht unter Umständen eine Kompromittierung der Neutralität involviert. Eine Behauptung des Inhalts, die Schriftsteller seien übereinstimmend der Ansicht, daß Ausfuhr von Konterbande neutralitätswidrig sei, findet sich an keiner Stelle der Note vom 29. Juni d. J. Die k. und k. Regierung hat ferner keineswegs einem Prinzip der Gleichmachung („*Equalisation*") das Wort geredet. In der Tat begründete sie ihre in der Frage der Ausfuhr von Kriegsbedarf vorgebrachte Anregung nicht damit, daß sie selbst nicht in der Lage sei, aus den Vereinigten Staaten von Amerika Kriegsmaterial zu beziehen. Ja, sie ist der Meinung, daß der übermäßige Export von Kriegsbedarf nicht einmal dann zulässig wäre, wenn ein solcher nach den Ländern beider Kriegsparteien sich vollzöge. Der Gedanke, es obliege einer neutralen Macht, den Nachteil, in dem sich Oesterreich-Ungarn infolge der Unmöglichkeit befindet, Kriegsmaterial aus deren Gebiet zu beziehen, dadurch wettzumachen, daß diese neutrale Macht ihren Untertanen den normalen Handel mit solchen Gegenständen mit den Feinden der Monarchie verbieten solle, hat der k. und k. Regierung niemals vorgeschwebt. Nur dagegen wandte sie sich, daß das Wirtschaftsleben der Vereinigten Staaten durch Schaffung neuer und Er-

weiterung bestehender Betriebe dem Zweck der Erzeugung und der Ausfuhr von Kriegsbedarf in weitestem Umfange dienstbar gemacht und auf solche Art sozusagen militarisiert wurde, wenn es gestattet ist, dieses viel mißbrauchte Wort hier zu verwenden. In dieser Konzentration so vieler Kräfte auf das eine Ziel, die Lieferung von Kriegsbedarf, welche, wenn auch nicht der Absicht nach, so doch tatsächlich eine wirksame Unterstützung einer der Kriegsparteien zur Folge hat, was um so auffälliger in die Erscheinung tritt, als der anderen Kriegspartei aus den Vereinigten Staaten nicht einmal solche Waren geliefert werden, die nicht Konterbande bilden, ist aber auch ein „*fait nouveau*“ gelegen, durch welches der Hinweis auf vermeintliche Präzedenzfälle in anderen Kriegen entkräftet wird. Die Parallele mit früheren Kriegen versagt um so mehr, als dies stets nur Kriege zwischen zwei einzelnen Mächten oder doch zwischen Gruppen wenig zahlreicher Mächte waren. Unter dieser Voraussetzung war es möglich, daß, wenn aus einem neutralen Land Kriegsmaterial nur an eine Kriegspartei geliefert wurde, deren Gegner sich an andere Neutrale wenden konnte. Im gegenwärtigen Kriege aber sind die Vereinigten Staaten von Amerika die einzige Macht, welche für solche Lieferungen füglich in Betracht kommen kann. Auch dadurch gewinnt also die Ausfuhr von Kriegsbedarf aus der Union, wie sie jetzt betrieben wird, eine ganz andere Bedeutung, als der Export von Konterbande jemals vorher haben konnte. Da alle diese unterscheidenden Momente erst im Verlauf des Krieges in voller Deutlichkeit hervorgetreten sind, glaubt die österreichisch-ungarische Regierung sich zu der Auffassung berechtigt, daß in ihnen im Sinne des letzten Absatzes des Préambule zur XIII. Konvention eine hinreichende Begründung für die Aenderung der Normen gelegen wäre, die in den Vereinigten Staaten bisher in Geltung sind. Zweifellos gehört die volle und strenge Unparteilichkeit, wie sie vom Washingtoner Kabinett angestrebt wird, und damit die Enthaltung von jeder direkten und indirekten Unterstützung und Förderung einer Kriegspartei jedenfalls auch zu den Rechten eines neutralen Staates. Zeigt die Erfahrung, daß ein Embargo irgendwelcher Art zu diesem Zweck im Verlauf eines Krieges nötig wird, dann ist diese Macht berechtigt, ihre bisherige Neutralitätspraxis zu ändern. Auf der anderen Seite stellt sich der gegenwärtige, von allen bisherigen völlig verschiedene Fall als ein Novum dar, welches sich, wie schon angedeutet, der Subsumierung unter den zitierten Artikel 7 entzieht und daher nicht anders denn als ein „*cas non prévu*“ betrachtet werden kann, welcher im Sinne des Préambule der XIII. Konvention (Absatz 3) nach den allgemeinen Grundsätzen des Völkerrechts, wie sie im vorstehenden entwickelt wurden, zu beurteilen kommt.

Auch die von der k. und k. Regierung in Ansehung der Zufuhr von Lebensmitteln und Rohstoffen gemachte Anregung ging nicht von der Idee aus, als wäre eine neutrale Regierung verpflichtet, die von einer Kriegspartei über die andere erlangten Vorteile durch ein *Non-Intercourse*-System mit jener Partei zu kompensieren. Die erwähnte Anregung galt, wie aus der Note vom 29. Juni d. J. hervorgeht, lediglich dem Zwecke, dem Washingtoner Kabinett, welches sich darauf berufen hatte, daß es den Vereinigten Staaten von Amerika infolge der Kriegslage unmöglich sei, mit den Zentralmächten Handel zu treiben, darzutun, daß es in der Hand der Bundesregierung liege, eine solche Möglichkeit zu eröffnen. Tatsächlich sind es ja nicht die maritimen Erfolge Großbritanniens und dessen Verbündeter, welche den Handel zwischen Amerika und Oesterreich-Ungarn, wenigstens soweit Nichtkonterbandewaren in Betracht kommen, aufhören machten, sondern die von den Ententestaaten getroffenen rechtswidrigen Maßnahmen, welche, wie der k. und k. Regierung nicht unbekannt geblieben ist, auch von der Unionsregierung als rechtswidrig betrachtet werden. Die k. und k. Regierung bestreitet zwar nicht, daß, falls

das Washingtoner Kabinett ihren Anschauungen Rechnung trüge, dadurch die Stellung der Vereinigten Staaten von Amerika zu den beiden Kriegsparteien auf dem Gebiete des Handelsverkehrs eine weniger ungleichartige werden würde, als sie es gegenwärtig ist. Daraus scheint aber der k. und k. Regierung um so weniger ein Argument gegen eine von einer neutralen Macht unter dem Gesichtspunkt der Neutralität etwa auch sonst als berechtigt anerkannte Anregung abgeleitet werden zu können, als es sicherlich auch nach Anschauung des Washingtoner Kabinetts nicht zu den Aufgaben eines neutralen Staates gehört, seine Stellung zu den beiden Kriegsparteien möglichst ungleichartig zu gestalten, oder, falls eine solche Ungleichartigkeit besteht, unter keinen Umständen daran zu rühren. Gegenüber der Annahme der Unionsregierung, die Ausfuhr von Waffen und Munition verstoße nach der Meinung der k. und k. Regierung gegen den letzten Absatz des Préambule zur XIII. Konvention, darf betont werden, daß die k. und k. Regierung ihre Stellungnahme gegen die übermäßige Ausfuhr von Kriegsbedarf, wie bereits oben dargetan, auf den 2. und 3. Absatz dieses Préambule gründete. Die Berufung auf den letzten Absatz war im Zusammenhang mit der Frage der illegitimen Abschließung Oesterreich-Ungarns von dem amerikanischen Markt gedacht und sollte zeigen, daß die Unionsregierung schon aus diesem Grunde zur Erlassung eines Ausfuhrverbots auf legislativem Wege berechtigt wäre.

Wenn die Regierung der Vereinigten Staaten, wie es scheint, zum Ausdruck bringen will, es fehle der Regierung einer kriegführenden Macht die Legitimation, das Wort zu nehmen, wenn es sich um die Wahrung oder die Ausübung eines Rechtes eines neutralen Staates handelt, so erklärt sich dies wohl daraus, daß das Washingtoner Kabinett den bezogenen letzten Absatz vielleicht etwas zu restriktiv dahin auslegt, als beziehe er sich nur auf höchst persönliche Rechte, deren Wahrnehmung auch nach Ansicht der k. und k. Regierung selbstverständlich dem eigenen Ermessen des neutralen Staates überlassen bleiben muß. Der besagte Absatz hat jedoch, wie aus dem Bericht erhellt, den der französische Delegierte Herr *Renault* dem Plenum der Haager Konferenz über die XIII. Konvention erstattet hat *(Deuxième Conf. Intern. de la Paix, Actes et doc., tome* I p. 328), den Fall der Wahrung der Neutralität im Auge, und es kann daher einem Kriegführenden die Befugnis nicht abgesprochen werden, unter Berufung auf die erwähnte Stelle an eine neutrale Regierung heranzutreten, wenn die Frage der Wahrung der Rechte des neutralen Staates den Rechtskreis des Kriegführenden tangiert.

Mit lebhaftem Interesse ist die k. und k. Regierung den Ausführungen gefolgt, worin die Gesichtspunkte dargelegt sind, welche es dem Washingtoner Kabinett unabweislich erscheinen lassen, im gegenwärtigen Krieg der Ausfuhr von Kriegsmaterial keine Schranken zu setzen. Sie gibt jedoch die Hoffnung nicht auf, der Zustimmung der Bundesregierung zu begegnen, wenn sie bemerkt, daß diesen Gesichtspunkten rein praktischer Natur irgendein Einfluß auf die Beurteilung der Rechtslage nicht zukommt, wobei es unsererseits ununtersucht bleiben muß, ob die Tatsache, daß die Erzeugung von Kriegsbedarf in den Vereinigten Staaten einen so ungeheuren Umfang annehmen konnte, nicht den Schluß gestatten würde, daß die Vereinigten Staaten, in denen alle Vorbedingungen dieser Produktion, Menschenkraft, Naturschätze und Kapital, in überreichem Maße gegeben sind, im Falle, als sie selbst Krieg zu führen hätten und die eigene Sache die Energien der Bürger noch steigerte, auf den Bezug von Kriegsmaterial aus dem Ausland nicht angewiesen wären.

Im einzelnen möchte die k. und k. Regierung noch folgendes beizufügen sich erlauben: Bei Anführung der vom Washingtoner Kabinett angerufenen Präzedenzfälle, welche jedoch, wie schon erwähnt, als solche nicht anerkannt zu werden vermögen, unterstreicht die Bundesregierung das Beispiel aus dem

Burenkrieg, in dessen Verlauf sich eine analoge kommerzielle Isolierung der einen Kriegspartei ergeben habe, wie im jetzigen Kriege. Eine derartige Analogie kann aber in Wahrheit kaum erblickt werden, weil Großbritannien damals ein Handelsverbot, wie es die jetzigen rechtswidrigen Maßnahmen des Londoner Kabinetts darstellen, nicht erlassen hat und in der Behinderung der Zufuhr von Waffen und Munition, deren die Unionsregierung Erwähnung tut, eine kommerzielle Isolierung gewiß nicht gesehen zu werden vermag, ganz zu geschweigen der Tatsache, daß die Ausfuhr von Kriegsmaterial aus Oesterreich-Ungarn im Burenkrieg, gleichwie in anderen Kriegen, wo eine solche Ausfuhr überhaupt stattfand, die Grenze der Zulässigkeit niemals überschritten hat. Was die Berufung auf den vom Washingtoner Kabinett angeführten deutschen Schriftsteller anlangt, so ist ihr ebenso wie den daran geknüpften Konklusionen der Boden wohl dadurch entzogen, daß, wie der Bundesregierung mittlerweile gewiß bekannt geworden ist, Herr *Einicke* selbst öffentlich dagegen Verwahrung eingelegt hat, eine Stelle seiner Abhandlung über die Neutralität im Seekrieg zugunsten der Haltung des Washingtoner Kabinetts verwertet zu sehen. Im übrigen hält es auch die k. und k. Regierung für selbstverständlich, daß ein neutraler Staat ein Ausfuhrverbot nicht in der Absicht erlassen darf, einer der Kriegsparteien zu schaden. Ebenso selbstverständlich kann aber von einem Ausfuhrverbot, welches ein Staat behufs Wahrung seiner Neutralität erlassen würde, niemals behauptet werden, es sei dies in der Absicht geschehen, eine Kriegspartei zu benachteiligen. Die Erörterungen der Bundesregierung endlich, welche von der Verproviantierung von Kriegsschiffen handeln, beruhen augenscheinlich auf einem Mißverständnis. Bei dem Hinweis auf das Verbot der Lieferung von Kriegsschiffen und das Verbot gewisser Lieferungen an Kriegsschiffe hatte die k. und k. Regierung nicht einen konkreten Fall im Auge, sondern die in den Artikeln 8, 19 und 20 der XIII. Haager Konvention ausgesprochenen Verbote.

Der Unterzeichnete hat die Ehre, sich an die Gefälligkeit Seiner Exzellenz des Herrn amerikanischen Botschafters mit der ergebensten Bitte zu wenden, von den vorstehenden freundschaftlichen Ausführungen, welche lediglich bestimmt sind, die Darstellung der Rechtslage, wie sie in der Note vom 29. Juni l. Js. gekennzeichnet war, unter Bedachtnahme auf die von der Bundesregierung vorgebrachten Momente abschließend zu ergänzen, dem Washingtoner Kabinett auf telegraphischem Wege Mitteilung machen zu wollen, und benützt zugleich auch diesen Anlaß, um Seiner Exzellenz, dem Herrn amerikanischen Botschafter, den Ausdruck seiner ausgezeichnetsten Hochachtung zu erneuern." *Burian* m. p.

Nr. 1956. Der Staatssekretär des Auswärtigen Amts in Berlin an den deutschen Botschafter in Washington, 26. September 1915. Widerlegung der amerikanischen Aussagen in der „Arabic"-Sache. (Das Staatsarchiv. Sammlung der offiziellen Aktenstücke zur Geschichte der Gegenwart. Band LXXXVI. S. 290—291.)

Berlin, 26. September 1915.

Schriftliches Material aus inzwischen abgeschlossener Untersuchung in „Arabic"-Sache, nämlich Meldung Kommandanten Unterseeboots vom 2. September sowie Protokoll über dienstliche und eidesstattliche Aussagen Kommandanten und Mannschaft vom 21. September dorthin unterwegs. Wortlaut wird gleichzeitig durch besonderen Funkspruch Botschaft übermittelt.

Versenkung „Arabic" geschah hiernach unter folgenden Umständen:

Während Unterseeboot auf Wegsinken leckgeschossenen Dampfers „Dunsley“ wartete und Rettungsboote Dampfer verließen, wurde „Arabic“ gesichtet, die sich mit südwestlichem Kurse näherte. Unterseeboot fuhr sogleich 12 Minuten in schneller Fahrt über Wasser, dann getaucht von „Dunsley“ weg nach Süden, um Kurs „Arabic“ durch Ineinspeilen Masten zu erkennen und Charakter Schiffes festzustellen. „Arabic“ änderte aber Kurs auf „Dunsley“, dessen Vorschiff schon sehr tief lag, und wendete dann plötzlich, ohne sich um Rettungsboote „Dunsley“ zu kümmern, wieder gerade auf Unterseeboot zu, das dadurch Gefahr lief, gerammt zu werden. Kommandant war fest überzeugt, daß er gesehen war und angegriffen wurde; um Rammstoß zuvorzukommen, griff er nördlich ausbiegend unter Wasser an. Torpedo traf „Arabic“ senkrecht zum Kurse Steuerbord achtern. „Arabic“ sank schnell etwa fünf Seemeilen von „Dunsley“; Leute retteten sich in etwa 15 Booten.

Amerikanisches Beweismaterial ist hiernach in folgenden Punkten zu berichtigen:

Zu 1: „Arabic“ hat sich nicht bis zur Torpedierung „Dunsley“ genähert; seit sie Kurs auf Unterseeboot nahm, hat sie sich von „Dunsley“ entfernt.

Zu 3: Hinter „Dunsley“ hat sich Unterseeboot keinen Augenblick versteckt.

Zu 4: Verhalten „Arabic“ erscheint unvereinbar mit der amerikanischen Behauptung, wonach Dampfer Unterseeboot nicht gesichtet hatte und infolgedessen Rammversuch nicht beabsichtigen konnte.

Zu 5: Warnung kam nicht in Frage, da Kommandant nach seiner Ueberzeugung von Dampfer bedroht wurde.

Zu 6, 7: Daß Torpedo aus geringer Entfernung auf „Arabic“ abgefeuert wurde, beruhte auf Umstand, daß Dampfer gerade auf Unterseeboot zufuhr.

Bei dieser Sachlage besteht kein Zweifel, daß Unterseebootskommandant Rammversuch der „Arabic“ angenommen hat und allen Grund hatte, ihn anzunehmen. Anderseits will deutsche Regierung eidlichen Aussagen englischer Schiffsoffiziere „Arabic“ Glauben nicht versagen und danach zugeben, daß tatsächlich ein Rammversuch nicht vorgelegen hat.

Angriff des Unterseeboots hat somit erteilten Instruktionen zu unserem Bedauern nicht entsprochen; dem Kommandanten ist eine dahingehende Eröffnung gemacht worden. Deutsche Regierung ist behufs endgültiger Beilegung Zwischenfalles aus freundschaftlichem Entgegenkommen, jedoch ohne Anerkennung völkerrechtlicher Verpflichtung bereit, für Tod amerikanischer Bürger Entschädigung zu gewähren.

Eure Exzellenz sind ermächtigt, amerikanischer Regierung entsprechende Mitteilung zu machen und gegebenenfalls wegen Höhe Schadenersatzes mit ihr unter Vorbehalt diesseitiger Entschließung zu verhandeln. Erwarte zuversichtlich, daß Zwischenfall damit endgültige Erledigung findet, da weitergehende Konzessionen ausgeschlossen erscheinen. gez. *Jagow.*

Nr. 1957. Penfield an Lansing, 30. September 1915. Bericht über den Empfang einer Antwortnote Oesterreich-Ungarns auf die amerikanische Note vom 8. September 1915 in Sachen der Abberufung des Botschafters Dumba. (**E. W. 3,** S. 321—322.)

American Embassy, Vienna, September 30, 1915.

Ambassador *Penfield* reports receipt of a note from the Minister for Foreign Affairs of Austria-Hungary replying to the Department's note of September 8, 1915.

The Austro-Hungarian Minister for Foreign Affairs states that he has learned that Mr. *Dumba* is no longer acceptable to the United States Government as Austro-Hungarian Ambassador, and inasmuch as cognizance of this information has been taken by the Austro-Hungarian Minister for Foreign Affairs, he has no doubt as to the conclusions to be drawn therefrom regarding Mr. *Dumba's* retention as Austro-Hungarian Ambassador in Washington. However, the Austro-Hungarian Minister for Foreign Affairs can not refrain from expressing the opinion that correspondence of a diplomatic character, especially between a Government and its Ambassador, regardless of the manner of transmission, should not, as has been the case in the department's note referred to, be made the subject of an official criticism from a Government to whose attention this correspondence could come only by an accident, and for which it was not intended. The sincere desire expressed by the United States Government that the relations between the two Governments should, as heretofore, still retain their friendly and cordial character, is likewise entertained by the Austro-Hungarian Minister for Foreign Affairs, and he avails himself of this opportunity to renew, etc.

Nr. 1958. Der deutsche Botschafter an Lansing, 5. Oktober 1915. Die deutsche Regierung bedauert den Untergang der „Arabic“ und ist zur Schadenersatzleistung für die amerikanischen Verluste bereit.

(**E. W. 3,** S. 218.)

German Embassy, Washington, October 5, 1915.

My dear Mr. Secretary: Prompted by the desire to reach a satisfactory agreement with regard to the „Arabic“ incident, my Government has given me the following instructions:

The orders issued by His Majesty the Emperor to the commanders of the German submarines — of which I notified you on a previous occasion — have been made so stringent that the recurrence of incidents similar to the „Arabic“ case is considered out of the question.

According to the report of Commander *Schneider*, of the submarine that sank the „Arabic“, and his affidavit as well as those of his men, Commander *Schneider* was convinced that the „Arabic“ intended to ram the submarine. On the other hand, the Imperial Government does not doubt the good faith of the affidavits of the British officers of the „Arabic“, according to which the „Arabic“ did not intend to ram the submarine. The attack of the submarine, therefore, was undertaken against the instructions issued to the commander. The Imperial Government regrets and disavows this act and has notified Commander *Schneider* accordingly.

Under these circumstances my Government is prepared to pay an indemnity for the American lives which, to its deep regret, have been lost on the „Arabic“. I am authorized to negotiate with you about the amount of this indemnity.

I remain, etc. *J. Bernstorff.*

Nr. 1959. Lansing an den deutschen Botschafter, 6. Oktober 1915. Empfangsbestätigung der deutschen Note vom 5. Oktober 1915 und Bereiterklärung zur Verhandlung über die Höhe des Schadenersatzes in Sachen „Arabic“.

(**E. W. 3,** S. 218–219.)

Department of State, Washington, October 6, 1915.

My dear Mr. Ambassador: I beg to acknowledge the receipt of your note of yesterday informing me that orders to the commanders of the German

submarines have been made so stringent that the recurrence of incidents similar to the „Arabic" case is considered out of the question; that the attack on the „Arabic" was undertaken against the instructions issued to the Commander of the submarine; and that the Imperial Government regrets and disavows this act and has notified Commander *Schneider* accordingly. Furthermore, you advise me that your Government is prepared to pay an indemnity for the loss of American lives and that you are authorized to negotiate with me in regard to this indemnity.

In reply I hasten to inform you that I have noted with satisfaction the above assurances of your Government, and I am now prepared to negotiate with you concerning the amount of the indemnity. Steps will be taken at once to come in touch with the interested persons, after which I shall be pleased to communicate with you further in this matter.

I am, etc. *Robert Lansing.*

Nr. 1960. Lansing an Gerard, 12. Oktober 1915. Anweisung zur Uebermittelung der beigegebenen amerikanischen Antwortnote zum „William P. Frye"-Fall an die deutsche Regierung auf deren Note vom 19. September 1915.

(**E. W. 3,** S. 312—314.)

Department of State, Washington, October 12, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

„In reply to Your Excellency's note of September 19, on the subject of the claim for damages for the sinking of the American merchantman „William P. Frye", I am instructed by the Government of the United States to say that it notes with satisfaction the willingness of the Imperial German Government to settle the questions at issue in this case by referring to a joint commission of experts the amount of the indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the vessel, and by referring to arbitration the question of the interpretation of treaty rights. The Government of the United States further notes that in agreeing to this arrangement the Imperial German Government expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the Government of the United States, and that the settlement of the question of indemnity does not prejudice the arrangement of the differences of opinion between the two governments concerning the interpretation of the treaty rights. The Government of the United States understands that this arrangement will also be without prejudice to its own contention in accordance with the statement of its position in its note of August 10 last to Your Excellency on this subject, and the Government of the United States agrees to this arrangement on that understanding. Your Excellency states that the Imperial German Government believes that the nomination of an umpire should be dispensed with, because it has been the experience of the Imperial German Government that the experts named in such cases have always reached an agreement without difficulty, and that should they disagree on some point, it could probably be settled by diplomatic negotiation. The Government of the United States entirely concurs in the view that it is not necessary to nominate an umpire in advance. It is not to be assumed that the experts will be unable to agree, or that if they are, the point in dispute can not be settled by diplomatic negotiation, but the Government of the United States believes that in agreeing to this arrangement it should be

understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States.

„Assuming that this understanding is acceptable to the German Government, it will only remain for the Government of the United States to nominate its expert to act with the expert already nominated by the German Government on the joint commission. It seems desirable to the Government of the United States that this joint commission of experts should meet without delay as soon as the American member is named and that its meetings should be held in the United States, because, as pointed out in my note to you of April 30 last, any evidence which the German Government may wish to have produced is more acceptable and can more conveniently be examined there than elsewhere.

„With reference to the agreement to submit to arbitration the question of treaty interpretation, the Government of the United States notes that in answer to its inquiry whether, pending the arbitral proceedings, the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question, the reply of the German Government is that it 'has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port', and that 'on the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband whenever such destruction is permissible according to the provisions of the Declaration of London'.

„Without admitting that the Declaration of London is in force, and on the understanding that the requirement in article 50 of the Declaration that 'before the vessel is destroyed all persons on board must be placed in safety' is not satisfied by merely giving them an opportunity to escape in lifeboats, the Government of the United States is willing, pending the arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband. On this understanding the Government of the United States agrees to refer to arbitration this question of treaty interpretation.

„The Government of the United States concurs in the desire of the Imperial German Government that the negotiations relative to the signing of the compromise referring this question of the treaty interpretation to arbitration under the provisions of article 52 of The Hague Arbitration Convention, should be conducted between the German Foreign Office and the American Embassy in Berlin, and the Government of the United States will be glad to receive the draft compromise, which you inform me the Foreign Office is prepared to submit to the American Ambassador in Berlin. Anticipating that it may be convenient for the Imperial German Government to know in advance of these negotiations the preference of the Government of the United States as to the form of arbitration to be arranged for in the compromise, my Government desires me to say that it would prefer, if agreeable to the Imperial Government, that the arbitration should be by summary procedure, based upon the provisions of articles 86 to 90, inclusive, of The Hague Arbitration Convention, rather than the longer form of arbitration before the Permanent Court at The Hague".

Arrange for simultaneous publication of this note at earliest date which will give you time to notify the Department. *Lansing.*

Nr. 1961. Deutsche Note vom 28. Oktober 1915 an Amerika. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin.

(A. A. U.*) Nr. 16.)

American Embassy, Berlin, October 30, 1915.

The following note has just been received 10 a. m. from Foreign Office:

„Ambassador Count *Bernstorff* has now reported about the negotiations conducted in Washington, D. C., with reference to the „Arabic" incident, and also communicated to me the text of the letter he addressed to the Secretary of State, Mr. *Lansing*.

„From the ambassador's report I see with satisfaction that a full understanding has been reached between our two Governments.

„As Count *Bernstorff*, acting under instructions of the Imperial Government, has already pointed out, the commander of the submarine that sank the „Arabic" was convinced that the „Arabic" intended to ram his boat. I have since transmitted by mail to Count *Bernstorff* the evidence on file here — that is, a legalized copy of the report made by the commander of the submarine on September 2, as well as legalized copies of the hearing of the witnesses, conducted on September 21, in the matter of the sinking of the English steamer „Arabic" by a German submarine, together with the diagram and English translations — and have requested him to bring this evidence to the knowledge of the American Government.

„I beg to transmit herewith also to Your Excellency copies of the above-mentioned documents, for I trust that Your Excellency's Government will gain from them the conviction that the circumstances as explained in the statements of the witnesses give the commander of the submarine justified reasons for his above-mentioned supposition.

„The German Government, on the other hand, as Count *Bernstorff* has already informed Mr. *Lansing*, does not want to refuse to credit the affidavit of the English officers of the „Arabic", according to which no submarine was seen from the „Arabic". The German Government therefore admits that whereas the commander personally was convinced that he acted in self defense, there was in fact no attempt made to ram the submarine. I may therefore repeat Count *Bernstorff's* statement that the attack of the submarine, to our regret, was not in accordance with their instructions issued, and that the commander has been notified accordingly.

„As it has been the intention of the Imperial Government to settle the incident in a friendly manner, Count *Bernstorff* has also been instructed, as you know, to declare to the American Government our readiness to pay, out of friendly consideration and leaving aside the question of the liability resulting from international law, an indemnity for the loss of the American lives which the German Government deeply**).

„In giving again expression to my satisfaction that Count *Bernstorff's* negotiations with the Secretary of State, Mr. *Lansing*, have led to a settlement of the incident, I avail myself of the occasion to renew to Your Excellency the assurances of my highest consideration.

(Signed) *von Jagow.*"

Gerard.

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*) Siehe auch **E. W. 3,** S. 226—227. — Herausgeber.

**) Apparent ommission.

Nr. 1962. Note des amerikanischen Botschafters in London vom 5. November 1915 an Grey.

(Misc. 15 [1916]*), S. 2—10.)

American Embassy, London, November 5, 1915.

Sir, Under instructions from the Secretary of State in Washington, I have the honour to make to you the following communication:

1. The Government of the United States has given careful consideration to the notes you were good enough to address to me on the 7th January, 10th February, 17th June, 23rd July, 31st July, 13th August, an to a note verbale from His Majesty's Embassy in Washington of the 6th August, relating to restrictions upon American commerce by certain measures adopted by His Britannic Majesty's Government during the present war. My Government has delayed answering the earlier of these notes in the hope that the announced purpose of His Majesty's Government „to exercise their belligerent rights with every possible consideration for the interest of neutrals", and their intention of „removing all causes of avoidable delay in dealing with American cargoes" and of causing „the least possible amount of inconvenience to persons engaged in legitimate trade", as well as their „assurances to the United States Government that they would make it their first aim to minimise the inconveniences" resulting from the „measures taken by the Allied Governments", would, in practice, not unjustifiably infringe upon the neutral rights of American citizens engaged in trade and commerce. It is, therefore, a matter of regret that this hope has not been realised, but that, on the contrary, interferences with American ships and cargoes destined in good faith to neutral ports and lawfully entitled to proceed have become increasingly vexatious, causing American shipowners and American merchants to complain to their Government of the failure to take steps to prevent an exercise of belligerent power in contravention of their just rights. As the measures complained of proceed directly from orders issued by the British Government, are executed by British authorities and arouse a reasonable apprehension that, if not resisted, they may be carried to an extent even more injurious to American interests. the Government of the United States is obliged to direct the attention of His Majesty's Government to the following considerations:

2. Without commenting upon the statistics presented by His Majesty's Government to show that the export trade of the United States has increased in volume since the war began, further than to point out that the comparative values fail to take into account the increased price of commodities resulting from a state of war, or to make any allowance for the diminution in the volume of trade which the neutral countries in Europe previously had with the nations at war, a diminution which compelled them to buy in other markets, I am instructed to pass directly to the matters which constitute the specific complaints of my Government.

3. First: The detentions of American vessels and cargoes which have taken place since the opening of hostilities have, it is presumed, been pursuant to the enforcement of the Orders in Council, which were issued on the

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*) Miscellaneous Nr. 15 (1916). Further correspondence between His Majesty's Government and the United States Government respecting the rights of belligerents. Presented to both Houses of Parliament by Command of His Majesty. April 1916. London 1916.

(Angeführt als **Misc. 15 [1916]**.)

Herausgeber.

20th August and the 29th October, 1914, and the 11th March, 1915, and relate to contraband traffic and to the interception of trade to and from Germany and Austria-Hungary. In practice these detentions have not been uniformly besed on proofs obtained at the time of seizure, but many vessels have been detained while search was made for evidence of the contraband character of cargoes, or of an intention to evade the non-intercourse measures of Great Britain. The question, consequently, has been one of evidence to support a belief, or in many cases a bare suspicion, of enemy destination, or occasionally of enemy origin, of the goods involved. Whether this evidence should be obtained by search at sea before the vessel or cargo is taken into port, and what the character of the evidence should be which is necessary to justify the detention, are the points to which I venture to direct your attention.

4. In regard to search at sea, an examination of the instructions issued to naval commanders of the United States, Great Britain, Russia, Japan, Spain, Germany, and France from 1888 to the beginning of the present war shows that search in port was not contemplated by the Government of any of these countries. On the contrary, the context of the respective instructions shows that search at sea was the procedure expected to be followed by the commanders. All of these instructions impress upon the naval officers the necessity of acting with the utmost moderation, and in some cases commanders are specifically instructed, in exercising the right of visit and search, to avoid undue deviation of the vessel from her course.

5. An examination of the opinions of the most eminent text-writers on the laws of nations shows that they give practically no consideration to the question of search in port, outside of examination in the course of regular Prize Court proceedings.

6. The assertion by His Majesty's Government that the position of the United States in relation to search at sea is inconsistent with its practice during the American Civil War is based upon a misconception. Irregularities there may have been at the beginning of that war, but a careful search of the records of this Government as to the practice of its commanders shows conclusively that there were no instances when vessels were brought into port for search prior to instituting Prize Court proceedings, or that captures were made upon other grounds than, in the words of the note which my Government had the honour to address to His Britannic Majesty's Ambassador in Washington on the 7th November, 1914, „evidence found on the ship under investigation and not upon circumstances ascertained from external sources". A copy of the instruction issued to American naval officers on the 18th August, 1862, for their guidance during the Civil War, is appended.

7. The British contention that „modern conditions" justify bringing vessels into port for search is based upon the size and seaworthiness of modern carriers of commerce and the difficulty of uncovering the real transaction in the intricate trade operations of the present day. It is believed that commercial transactions of the present time, hampered as they are by censorship of telegraph and postal communication on the part of belligerents, are essentially no more complex and disguised than in the wars of recent years, during which the practice of obtaining evidence in port to determine whether a vessel should be held for prize proceedings was not adopted. The effect of the size and seaworthiness of merchant vessels upon their search at sea has been submitted to a board of naval experts, which reports that —

„At no period in history has it been considered necessary to remove every package of a ship's cargo to establish the character and nature of her trade or the service on which she is bound, nor is such removal necessary . . . .

„The facilities for boarding and inspection of modern ships are, in fact, greater than in former times, and no difference, so far as the necessities of the case are concerned, can be seen between the search of a ship of 1000 tons and one of 20 000 tons, except possibly a difference in time, for the purpose of establishing fully the character of her cargo and the nature of her service and destination. . . . . This method would be a direct aid to the belligerents concerned, in that it would release a belligerent vessel overhauling the neutral from its duty of search and set it free for further belligerent operations."

8. Turning to the character and sufficiency of the evidence of the contraband nature of shipments to warrant the detention of a suspected vessel or cargo for prize proceedings, it will be recalled that when a vessel is brought in for adjudication Courts of Prize have hitherto been bound by well-established and long-settled practice to consider at the first hearing only the ship's papers and documents and the goods found on board, together with the written replies of the officers and seamen to standing interrogatories taken under oath, alone and separately, as soon as possible, and without communication with or instruction by counsel, in order to avoid possibility of corruption and fraud.

9. Additional evidence was not allowed to be introduced except upon an order of the Court for „further proof", and then only after the cause had been fully heard upon the facts already in evidence, or when this evidence furnished a ground for prosecuting the enquiry further. This was the practice of the United States Courts during the war of 1812, the American Civil War, and the Spanish-American War, as is evidenced by the reported desicions of those Courts, and has been the practice of the British Prize Courts for over a century. This practice has been changed by the British Prize Court Rules adopted for the present by the Order in Council of the 5th August. Under these new rules there is no longer a „first hearing" on the evidence derived from the ship, and the Prize Court is no longer precluded from receiving extrinsic evidence for which a suggestion has not been laid in the preparatory evidence. The result is, as pointed out above, that innocent vessels or cargoes are now seized and detained on mere suspicion, while efforts are made to obtain evidence from extraneous sources to justify the detention and the commencement of prize proceedings. The effect of this new procedure is to subject traders to risk of loss, delay, and expense so great and so burdensome as practically to destroy much of the export trade of the United States to neutral countries of Europe.

10. In order to place the responsibility for the delays of vessels and cargoes upon American claimants, the Order in Council of the 29th October, 1914, as pointed out in the British note of the 10th February, seeks to place the burden of proof as to the noncontraband character of the goods upon the claimant in cases where the goods are consigned „to order" or the consignee is not named, or the consignee is within enemy territory. Without admitting that the onus probandi can rightfully be made to rest upon the claimant in these cases, it is sufficient for the purpose of this note to point out that the three classes of cases indicated in the Order in Council of the 29th October apply to only a few of the many seizures or detentions which have actually been made by British authorities.

11. The British contention that in the American Civil War the captor was allowed to establish enemy destination by „all the evidence at his disposal", citing the „Bermuda" case (3 Wallace 515), is not borne out by the facts of that case. The case of the „Bermuda" was one of „further proof", a proceeding not to determine wheter the vessel should be detained and placed

in a Prize Court, but whether te vessel, having been placed in Prize Court, should be restored or condemned. The same ruling was made in the case of the „Sir William Peel“ (5 Wallace 517). These cases, therefore, cannot be properly cited as supporting the course of a British captor in taking a vessel into port there to obtain extrinsic evidence to justify him in detaining the vessel for prize proceedings.

12. The further contention, that the greatly increased imports of neutral countries, adjoining Great Britain's enemies raise a presumption that certain commodities, such as cotton, rubber, and others more or less useful for military purposes, though destined for those countries, are nitended for re-exportation to the belligerents who cannot import them directly, and that this fact justifies the detention for the purpose of examination of all vessels bound for the ports of those neutral countries, notwithstanding the fact that most of the articles of trade have been placed on the embargo lists of those countries, cannot be accepted as laying down a just or legal rule of evidence. Such a presumption is too remote from the facts, and offers too great opportunity for abuse by the belligerent, who could, if the rule were adopted, entirely ignore neutral rights on the high seas and prey with impunity upon neutral commerce. To such a rule of legal presumption my Government cannot accede, as it is opposed to those fundamental principles of justice which are the foundation of the jurisprudenee of the United States and Great Britain.

13. Before passing from the discussion of this contention as to the presumption raised by increased importations to neutral countries, my Government desires to direct attention to the fact that His Majesty's Government admit that the British exports to those countries have also materially increased since the present war began. Thus Great Britain concededly shares in creating a condition which is relied upon as a sufficient ground to justify the interception of American goods destined to neutral European ports. If British exports to those ports should be still further increased, it is obvious that, under the rule of evidence contended for by the British Government, the presumption of enemy destination could be applied to a greater number of American cargoes, and American trade would suffer to the extent that British trade benefited by the increase. Great Britain cannot expect the United States to submit to such manifest injustice or to permit the rights of its citizens to be so seriously impaired.

14. When goods are clearly intended to become incorporated in the mass of merchandise for sale in a neutral country it is an unwarranted and inquisitorial proceeding to detain shipments for examination as to whether those goods are ultimately destined for the enemy's country or use. Whatever may be the conjectural conclusions to be drawn from trade statistics, which, when stated by value, are of uncertain evidence as to quantity, the United States maintains the right to sell goods into the general stock of a neutral country, and denounces as illegal and unjustifiable any attempt of a belligerent to interfere with that right on the ground that it suspects that the previous supply of such goods in the neutral country, which the imports renew or replace, has been sold to an enemy. That is a matter with which the neutral vendor has no concern, and which can in no way affect his rights of trade. Moreover, even if goods listed as conditional contraband are destined to an enemy country through a neutral country, that fact is not in itself sufficient to justify their seizure.

15. In view of these considerations, the United States, reiterating its position in this matter, has no other course but to contest seizures of vessels at sea upon conjectural suspicion and the practice of bringing them into port

for the purpose, by search or otherwise, of obtaining evidence, for the purpose of justifying prize proceedings, of the carriage of contraband or of breaches of the Order in Council of the 11th March. Relying upon the regard of His Majesty's Government for the principles of justice so frequently and uniformly manifested prior to the present war, the Government of the United States anticipates that the British Government will instruct their officers to refrain from these vexatious and illegal practices.

16. Second: The Government of the United States further desires to direct particular attention to the so-called „blockade" measures imposed by the Order in Council of the 11 th March. The British note of the 23rd July, 1915, appears to confirm the intention indicated in the note of the 15th March, 1915, to establish a blockade so extensive as to prohibit trade with Germany or Austria-Hungary, even through the ports of neutral countries adjacent to them. Great Britain, however, admits that it should not, and gives assurances that it will not, interfere with trade with the countries contiguous to the territories of the enemies of Great Britain. Nevertheless, after over six months' application of the „blockade" order, the experience of American citizens has convinced the Government of the United States that Great Britain has been unsuccessfull in her efforts to distinguish between enemy and neutral trade. Arrangements have been made to create in these neutral countries special consignees or consignment corporations, with power to refuse shipments, and to determine when the state of the country's resources requires the importation of new commodities. American commercial interests are hampered by the intricacies of these arrangements, and many American citizens justly complain that their bonâ fide trade with neutral countries is greatly reduced as a consequence, while others assert that their neutral trade, which amounted annually to a large sum, has been entirely interrupted.

17. It makes this practice even more harassing to neutral traders that the British authorities require a consignor to prove that his shipments are not bound to an enemy of Great Britain, even when the articles are on the embargo list of the neutral country to which they are destined, and that notwithstanding the assertion in the last British note that interference with such trade by a belligerent can only take place „provided of course that he (the belligerent) can establish" that the commerce is with the enemy.

18. While the United States Government was at first inclined to view with leniency the British measures which were termed in the correspondence, but not in the Order in Council of the 11th March, a „blockade", because of the assurances of the British Government that inconvenience to neutral trade would be minimised by the discretion left to the Courts in the application of the Order in Council, and by the instructions which it was said would be issued to the administrative and other authorities having to do with the execution of the so-called „blockade" measures, the Government of the United States is now forced to the realisation that its expectations, which were fully set forth in its note of the 30th March, were based on a misconception of the intentions of the British Government. Desiring to avoid controversy, and in the expectation that the administration of the Order in Council would conform to the established rules of international law, the Government of the United States has until now reserved the question of the actual validity of the Order in Council of the 11th March, in so far as it is considered by the Government of Great Britain to establish a blockade within the meaning of that term as understood in the law and the practice of nations; but in the circumstances now developed it feels that it can no longer permit the validity of the alleged blockade to remain unchallenged.

19. The Declaration of Paris in 1856, which has been universally recognised as correctly stating the rule of international law as to blockade,

expressly declares that „blockades, in order to be binding, must be effective, that is to say, maintained by force sufficient really to prevent access to the coast of the enemy". The effectiveness of a blockade is manifestly a question of fact. It is common knowledge that the German coasts are open to trade with the Scandinavian countries and that German naval vessels cruise both in the North Sea and the Baltic and seize and bring into German ports neutral vessels bound for Scandinavian and Danish ports. Furthermore, from the recent placing of cotton on the British list of contraband of war it appears that His Majesty's Government have themselves been forced to the conclusion that the blockade is ineffective to prevent shipments of cotton from reaching their enemies, or else that they are doubtful as to the legality of the form of blockade which they have sought to maintain.

20. Moreover, it is an essential principle which has been universally accepted that a blockade must apply impartially to the ships of all nations. This was set forth in the Declaration of London, is found in the Prize Courts of Germany, France, and Japan, and has long been admitted as a basic principle of the law of blockade. This principle, however, is not applied in the present British „blockade", for, as above indicated, German ports are notoriously open to traffic with the ports of Denmark, Norway, and Sweden. So strictly has this principle been enforced in the past that, in the Crimean War the Judical Committee of the Privy Council on appeal laid down that, if belligerents themselves trade with blockaded ports they cannot be regarded as effectively blockaded. (The „Franciska", Moore P. C. 56.) This decision has special significance at the present time, since it is a matter of common knowledge that Great Britain exports and re-exports large quantities of merchandise to Norway, Sweden, Denmark, and Holland, whose ports, so far as American commerce is concerned, she regards as blockaded. In fact, the British note of the 13th August itself indicates that the British exports of many articles, such as cotton, lubricating oil, tobacco, cocoa. coffee, rice, wheat flour, barley, spice, tea, copra, &c., to these countries have greatly exceeded the British exports of the same articles for the corresponding period of 1914. The note also shows that there has been an important British trade with these countries in many other articles, such as machinery, beef, butter, cotton waste, &c.

21. Finally, there is no better settled principle of the law of nations than that which forbids the blockade of neutral ports in time of war. The Declaration of London, though not regarded as binding upon the signatories, because not ratified by them, has been expressly adopted by the British Government without modification as to blockade in the British Order in Council of the 29th October, 1914. Article 18 of the Declaration declares specifically that: „The blockading forces must not bar access to neutral ports or coasts." This is, in the opinion of this Government, a correct statement of the universally accepted law as it exists to-day, and as it existed prior to the Declaration of London. The meaning of this statement is elucidated by M. *Renault* in the report of the Drafting Committee upon the convention, in which he states: —

> „This rule has been thought necessary the better to protect the commercial interests of neutral countries; it completes article 1, according to which a blockade must not extend beyond the ports and coasts of the enemy, which implies that, as it is an operation of war, it must not be directed against a neutral port, in spite of the importance to a belligerent of the part played by that port in supplying his adversary."

As the Conference assembled at London upon the invitation of the British Government, it is important to recall your own instruction to the

British delegates, „setting out the views of His Majesty's Government founded on the decisions of the British Courts", in which you say: —

„A blockade must be confined to the ports and coast of the enemy, but it may be instituted of one port or of several ports or of the whole of the sea-bord of the enemy. It may be instituted to prevent the ingress only or egress only, or both."

You added: —

„Where the ship does not intend to proceed to the blockaded port, the fact that goods on board are to be sent on by sea or by inland transport is no ground for condemnation."

In support of this announcement you referred to several decisions of British Prize Courts, among which an early one of 1801 held that goods shipped from London to Emden, thence inland or by canal to Amsterdam, then blockaded by sea, were not subject to condemnation for breach of blockade. („Jonge Pieter", 4 C. R. 79.) This has been the rule for a century, so that it is scarcely necessary to recall that the „Matamoras" cases, well known to the British Government, support the same rule, that neutral ports may not be blockaded, though „trade with unrestricted inland commerce between such a port and the enemy's territory impairs undoubtedly, and very seriously impairs, the value of a blockade of the enemy's coast."

22. Without mentioning the other customary elements of a regularly imposed blockade, such as notification of the particular coast-line invested, the imposition of the penalty of confiscation, &c., which are lacking in the present British „blockade" policy, it need only be pointed out that, measured by the three universally conceded tests above set forth, the present British measures cannot be regarded as constituting a blockade in law, in practice, or in effect.

23. It is incumbent upon the United States Government, therefore, to give His Britannic Majesty's Government notice that the blockade, which they claim to have instituted under the Order in Council of the 11th March, cannot be recognised as a legal blockade by the United States.

24. Since the Government of Great Britain has laid much emphasis on the ruling of the Supreme Court of the United States in the „Springbok" case, that goods of contraband character seized while going to the neutral port of Nassau, though actually bound for the blockaded ports of the South, were subject to condemnation, it is not inappropriate to direct attention to the British view of this case in England prior to the present war, as expressed by you in your instructions to the British delegates to the London Conference in 1908: —

„It is exceedingly doubtful whether the decision of the Supreme Court was in reality meant to cover a case of blockade-running in which no question of contraband arose. Certainly, if such was the intention, the decision would pro tanto be in conflict with the practice of the British Courts. His Majesty's Government sees no reason for departing from that practice, and you should endeavour to obtain general recognition of its correctness."

It may be pointed out also that the circumstances surrounding the „Springbok" case were essentially different from those of the present day to which the rule laid down in that case is sought to be applied. When the „Springbok" case arose the ports of the Confederate States were effectively blockaded by the naval forces of the United States, though no neutral ports were closed and a continuous voyage through a neutral port required an all-sea voyage terminating in an attempt to pass the blockading squadron.

25. Third: It appears to be the position of Great Britain that, if, as the United States alleges, American citizens or American interests are

directly and adversely affected by the British policies of contraband and non-intercourse, resulting in interference with ships and cargoes, they should seek redress in the Prize Courts which the British Government have established, and that, pending the exhaustion of such legal remedies with the result of a denial of justice, the British Government „cannot continue to deal through the diplomatic channels with the individual cases".

26. It is declared that this was the course followed by the United States during the American Civil War and the Spanish War, and that both countries have supported the practice by allowing their Prize Court decisions, when shown to be unjust or inadequate, to be reviewed by an international tribunal, as was done under the Treaties of 1794 and 1871. The ground upon which this contention is put forth, and the results which would follow, if the course of procedure suggested were accepted, give the impression that His Majesty's Government do not rely upon its soundness or strength. Nevertheless, since it has been advanced I cannot refrain from presenting certain considerations which will show that the proposed course embodies the form rather than the substance of redress. The cases which the British Government would have claimants present to their Prize Courts are essentially different from cases arising wholly within the jurisdiction of a foreign country. They result from acts committed by the British naval authorities upon the high seas, where the jurisdiction over neutral vessels is acquired solely by international law. Vessels of foreign nationality, flying a neutral flag and finding their protection in the country of that flag, are seized without facts warranting a reasonable suspicion that they are destined to blockaded ports of the enemy or that their cargoes are contraband, although the possession of such facts is, by international law, essential to render a seizure legal. The officers appear to find their justification in the Orders in Council and regulations of His Majesty's Government, in spite of the fact that in many of the present cases the Orders in Council and the regulations for their enforcement are themselves complained of by claimants as contrary to international law. Yet the very Courts which it is said are to dispense justice to dissatisfied claimants are bound by the Orders in Council. This is unmistakably indicated to be the case in the note you were so good as to address to me on the 31st July, which states that: —

> „British Prize Courts, 'according to the ancient form of commission under which they sit, are to determine cases according to the course of admiralty and the law of nations and the statutes, rules, and regulations for the time being in force in that behalf'."

The principle, the note adds, has recently been announced and adhered to by the British Prize Court in the case of the „Zamora". It is manifest, therefore, that if Prize Courts are bound by the laws and regulations under which seizures and detentions are made, and which claimants allege are in contravention of the law of nations, those Courts are powerless to pass upon the real ground of complaint, or to give redress for wrongs of this nature. Nevertheless, it is seriously suggested that claimants are free to request the Prize Court to rule upon a claim of conflict between an Order in Council and a rule of international law. How can a tribunal fettered in its jurisdiction and procedure by municipal enactments declare itself emancipated from their restrictions, and at liberty to apply the rules of international law with freedom? The very laws and regulations which bind the Court are now matters of dispute between the Government of the United States and that of His Britannic Majesty. If Great Britain followed, as she declares that she did, the course of first referring claimants to local remedies in cases arising out of American wars, it is presumed that she did so because of her knowledge or understanding that the United States had not sought

to limit the jurisdiction of its Courts of Price by instructions and regulations violative of the law and practice of nations, or open to such objection.

27. Your note of the 10th February states that His Majesty's Government in the American Civil War: —

> „In spite of remonstrances from many quarters, placed full reliance on the American Prize Courts to grant redress to the parties interested in cases of alleged wrongful capture by American ships of war, and put forward no claim until the opportunity for redress in those Courts had been exhausted."

The Government of the United States recalls that, during the progress of that war, Great Britain in several instances demanded, through diplomatic channels, damages for seizures and detentions of British ships alleged to have been made without legal justification. Among these may be mentioned the cases of the „Magicienne", the „Don José", the „Labuan", and the „Saxon". Two of these cases were, at the time the demands were made, before American Prize Courts for adjudication. It is understood also that during the Boer war, when British authorities seized the German vessels, the „Herzog", the „General", and the „Bundesrat", and released them without price proceedings, compensation for damages suffered was arranged through diplomatic channels.

28. There is, furthermore, a real and far-reaching injury for which Prize Courts offer no means of reparation. It is the disastrous effect of the methods of the Allied Governments upon the general right of the United States to enjoy its international trade free from unusual and arbitrary limitations imposed by belligerent nations. Unwarranted delay and expense in bringing vessels into port for search and investigation upon mere suspicion has a deterrent effect upon trade ventures, however lawful they may be, which cannot be adequately measured in damages. The menace of interference with legal commerce causes vessels to be withdrawn from their usual trade routes and insurance on vessels and cargoes to be refused, while exporters for the same reason are unable or unwilling to send their goods to foreign markets, and importers dare not buy commodities abroad because of fear of their illegal seizure or because they are unable to procure transportation. For such injuries there can be no remedy through the medium of Courts established to adjust claims for goods detained or condemned. For specific injuries suffered by private interests Prize Courts, if they are free to apply the law of nations, might mete out an adequate indemnity, but for the injury to the trade of a nation by the menace of unwarranted interference with its lawful and established pursuit, there can manifestly be found no remedy in the Prize Courts of Great Britain to which United States citizens are referred for redress.

29. There is another ground why American citizens cannot submit their wrongs arising out of undue detentions and seizures to British Price Courts for reparation, which I cannot pass over unnoticed. It is the manner in which British Courts obtain jurisdiction of such cases. The jurisdiction over merchant vessels on the high seas is that of the nation whose flag it rightfully flies. This is a principle of the law and practice of nations fundamental to the freedom of the high seas. Municipal enactments of a belligerent Power cannot confer jurisdiction over or establish rules of evidence governing the legality of seizures of vessels of neutral nationality on the high seas. International law alone controls the exercise of the belligerent right to seize and detain such vessels. Municipal laws and regulations in violation of the international rights of another nation cannot be extended to the vessels of the latter on the high seas so as to justify a belligerent nation

bringing them into its ports, and, having illegally brought them within its territorial jurisdiction, compelling them to submit to the domestic laws and regulations of that nation. Jurisdiction obtained in such a manner is contrary to those principles of justice and equity which all nations should respect. Such practice should invalidate any disposition by a municipal Court of property thus brought before it. The Government of the United States has, therefore, viewed with surprise and concern the attempt of His Majesty's Government to confer upon the British Prize Courts jurisdiction by this illegal exercise of force in order that these Courts may apply to vessels and cargoes of neutral nationalities, seized on the high seas, municipal laws and orders which can only rightfully be enforceable within the territorial waters of Great Britain, or against vessels of British nationality when on the high seas.

30. In these circumstances the United States Government feel that it cannot reasonably by expected to advise its citizens to seek redress before tribunals which are, in its opinion, unauthorised by the unrestricted application of international law to grant reparation, nor to refrain from presenting their claims directly to the British Government through diplomatic channels.

31. My Government is advised that vessels and cargoes brought in for examination prior to prize proceedings are released only upon condition that costs and expenses incurred in the course of such unwarranted procedure, such as pilotage, wharfage, demurrage, harbour dues, warehouseage, unlading costs, &c., be paid by the claimants or on condition that they sign a waiver of right to bring subsequent claims against the British Government for these exactions. My Government is loth to believe that such ungenerous treatment will continue to be accorded American citizens by the Government of His Britannic Majesty, but in order that the position of the United States Government may be clearly understood, I take this opportunity to inform you that my Government denies that the charges incident to such detentions are rightfully imposed upon innocent trade, or that any waiver of indemnity exacted from American citizens under such conditions of duress can preclude them from obtaining redress through diplomatic channels, or by whatever other means may be open to them.

32. Before closing this note, in which frequent reference is made to contraband traffic and contraband articles, it is necessary, in order to avoid possible misconstruction, that it should be clearly understood by His Majesty's Government that there is no intention in this discussion to commit the Government of the United States to a policy of waiving any objection which it may entertain as to the propriety and right of the British Government to include in their list of contraband of war certain articles which have been so included. The United States Government reserves the right to make this matter the subject of a communication to His Majesty's Government on a later day.

33. I believe it has been conclusively shown that the methods sought to be employed by Great Britain to obtain and use evidence of enemy destination of cargoes bound for neutral ports and to impose a contraband character upon such cargoes are without justification; that the blockade, upon which such methods are partly founded, is ineffective, illegal, and indefensible; that the judicial procedure offered as a means of reparation for an international injury is inherently defective for the purpose; and that in many cases jurisdiction is asserted in violation of the law of nations. The United States, therefore, cannot submit to the curtailment of its neutral rights by these measures, which are admittedly retaliatory, and therefore illegal, in conception and in nature, and intended to punish the enemies of Great Britain

for alleged illegalities on their part. The United States might not be in a position to object to them if its interests and the interests of all neutrals were unaffected by them, but, being affected, it cannot with complacence suffer further subordination of its rights and interests to the plea that the exceptional geographic position of the enemies of Great Britain require or justify oppressive and illegal practices.

34. The Government of the United States desires, therefore, to impress most earnestly upon His Majesty's Government that it must insist that the relations between it and His Majesty's Government be governed, not by a policy of expediency, but by those established rules of international conduct upon which Great Britain in the past has held the United States to account when the latter nation was a belligerent engaged in a struggle for national existence. It is of the highest importance to neutrals not only of the present day, but of the future, that the principles of international right be maintained unimpaired.

35. This task of championing the integrity of neutral rights, which have received the sanction of the civilised world against the lawless conduct of belligerents arising out of the bitterness of the great conflict which is now wasting the countries of Europe, the United States unhesitatingly assumes, and to the accomplishment of that task it will devote its energies, exercising always that impartiality which from the outbreak of the war it has sought to exercise in its relations with the warring nations.

Pursuant to my instructions I have the honour to enclose as supplements to this note the United States Navy Order of the 18th August, 1862, and a statement regarding vessels detained by British authorities.

I have the honour to be,

With the highest consideration,
Sir,
Your most obedient humble servant,
Walter Hines Page.

Nr. 1963. Deutsche Denkschrift vom 28. November 1915 über die Ermordung der Besatzung eines deutschen Unterseeboots durch den Kommandanten des englischen Hilfskreuzers „Baralong“. (Norddeutsche Allgemeine Zeitung Nr. 340, Zweite Ausgabe vom 8. Dezember 1915.)

Vor den öffentlichen Notaren *M. E. Ansley* in der Grafschaft Hancock im Staate Mississippi und *Charles J. Denechaud* im Gemeindebezirk Orleans

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Anmerkung:
Die folgenden Anhänge:

Appendix Nr. 1.
Instructions of the Secretary of the Navy to Flag Officers Commanding Squadrons and Officers Commanding Cruisers, relative to the Right of Search.
Navy Departement, August 18, 1862,
und
Appendix Nr. 2.
Statement regarding Vessels detained by British Authorities.
September 10, 1915,

finden sich a. a. O. S. 10—19.

Herausgeber.

im Staate Louisiana haben am 5. und 8. Oktober d. J. sechs Bürger der Vereinigten Staaten von Amerika die anliegenden eidlichen Bekundungen über die Ermordung der Besatzung eines deutschen Unterseeboots durch den Kommandanten des britischen Hilfskreuzers „Baralong“ abgegeben (Anlage 1 bis 3).

Die Namen dieser Zeugen sind:

1. *J. M. Garrett* aus Kiln in der Grafschaft Hancock im Staate Mississippi,
2. *Charles D. Hightower* aus Crystal City im Staate Texas,
3. *Bud Emerson Palen* aus Detroit im Staate Michigan,
4. *Edward Clark* aus Detroit im Staate Michigan,
5. *R. H. Cosby* aus Crystal City im Staate Texas,
6. *James J. Curran* aus Chicago im Staate Illinois.

Von den Zeugen sind *Clark* und *Cosby* 21 Jahre, *Garrett* und *Hightower* 22 Jahre, *Palen* 27 Jahre und *Curran* 32 Jahre alt. Alle erfreuen sich nach den über sie an Ort und Stelle eingezogenen Erkundigungen eines guten Rufes; *Curran* ist längere Zeit als Handlungsreisender in verschiedenen großen Geschäftshäusern Amerikas tätig gewesen.

Nach den übereinstimmenden Aussagen dieser Zeugen hat sich der Vorfall wie folgt zugetragen:

Im August 1915 befand sich der britische Dampfer „Nicosian“, der etwa 350 Maultiere für Kriegszwecke an Bord hatte, also mit Konterbande beladen war, auf der Fahrt von New Orleans nach Avonmouth; die Zeugen waren als Maultierpfleger und Aufseher mitgenommen. Am 19. August wurde der Dampfer etwa 70 Seemeilen südlich von Queenstown (Irland) von einem deutschen Unterseeboot angehalten und beschossen, nachdem zuvor die gesamte Mannschaft, darunter die Zeugen, das Schiff auf den Rettungsbooten verlassen hatte.

Als die Zeugen auf den Rettungsbooten außerhalb der Feuerlinie des Unterseeboots waren, näherte sich dem Schauplatz ein Dampfer, der von den Zeugen *Garrett, Hightower, Clark* und *Curran* von der „Nicosian“ aus bemerkt worden war und der sich später als der britische Hilfskreuzer „Baralong“ herausstellte. Beim Näherkommen dieses Dampfers erkannten sämtliche Zeugen deutlich, daß er am Heck die amerikanische Flagge führte und daß an seinen Seitenwänden große Schilder mit darauf gemalter amerikanischer Flagge angebracht waren. Da der Dampfer die Abzeichen eines neutralen Staates trug und Signale gesetzt hatte, die nach der Erklärung seekundiger Leute von der Besatzung der „Nicosian“ bedeuteten, daß er auf Wunsch Hilfe leisten wolle, sein Aeußeres auch durch nichts seinen kriegerischen Charakter verriet, nahm die in den Rettungsbooten befindliche Mannschaft an, daß er sich lediglich mit ihrer Rettung befassen würde.

Während das Unterseeboot aus nächster Nähe die Backbordseite der „Nicosian“ beschoß, kam der fremde Dampfer hinter dieser auf und fuhr an ihrer Steuerbordseite vorbei. Als er ein wenig über den Bug der „Nicosian“ hinaus war, wurde von seinem Bord auf das Unterseeboot geschossen, und zwar, wie, außer *Garrett*, sämtliche Zeugen angeben, zuerst mit Handfeuerwaffen und unmittelbar darauf auch aus Geschützen, die bis dahin durch Schutzwände verdeckt waren und erst nach deren Beseitigung sichtbar wurden. Der Zeuge *Curran* hat auch bekundet, daß die amerikanische Flagge, die das fremde Schiff am Heck führte, erst nach dem Gewehrfeuer niedergeholt worden sei. Er hat diese Aussage in einer vor dem öffentlichen Notar *Robert Schwarz* in New York am 21. Oktober 1915 aufgenommenen Verhandlung wiederholt.

Als das von mehreren Schüssen getroffene Unterseeboot zu sinken begann, sprangen der Kommandant und eine Anzahl Seeleute über Bord, die Seeleute,

nachdem sie sich vorher ihrer Kleidung entledigt hatten. Einigen von ihnen — die Zahl wird von den Zeugen *Garrett* und *Curran* auf fünf angegeben — gelang es, sich an Bord der „Nicosian“ zu retten, während sich die übrigen an den Leinen hielten, die von den hinabgefierten Rettungsbooten der „Nicosian“ ins Wasser hingen. Die an den Leinen hängenden Leute wurden teils durch Geschützfeuer der „Baralong“, teils durch Gewehrfeuer der Mannschaft getötet, während die Zeugen aus den Rettungsbooten an Bord der „Baralong“ stiegen oder sich daselbst bereits an Deck aufhielten. Der Zeuge *Curran* bekundet hierüber noch besonders, daß der Kommandant des fremden Dampfers seinen Leuten befohlen habe, eine Linie an der Reling zu bilden und auf die hilflosen deutschen Matrosen im Wasser zu schießen.

Hierauf fuhr der Kommandant der „Baralong“ breitseits an die „Nicosian“ heran, ließ diese festmachen und befahl sodann einigen seiner Leute, auf die „Nicosian“ hinüberzugehen und die deutschen Matrosen, die sich darauf gerettet hatten, zu suchen. Die Zeugen *Palen* und *Curran* bekunden dabei, daß der Kommandant ausdrücklich angeordnet habe, „keine Gefangenen zu machen“. In der Tat wurden auf der „Nicosian“ vier deutsche Matrosen im Maschinenraum und im Wellengang aufgefunden und ermordet.

Dem Kommandanten des deutschen Unterseebootes gelang es, wie die Zeugen übereinstimmend bekunden, nach dem Bug der „Nicosian“ zu entkommen. Er sprang ins Wasser und schwamm um den Bug des Schiffes herum auf die „Baralong“ zu. Die englischen Seeleute an Bord der „Nicosian“ schossen sofort auf ihn, obwohl er allen sichtbar die Hände zum Zeichen, daß er sich ergeben wolle, emporhob, und setzten das Feuer auch fort, nachdem ihn ein Schuß anscheinend in den Mund getroffen hatte. Schließlich tötete ihn ein Schuß in den Nacken.

Vorübergehend wurden dann sämtliche Zeugen an Bord der „Nicosian“ zurückbefohlen. Dort sahen die Zeugen *Palen* und *Cosby* je einen Leichnam eines deutschen Matrosen, während der Zeuge *Curran*, der mit den für die Bergung des Dampfers dringend notwendigen Mannschaften an Bord verblieb, sämtliche vier Leichen gesehen hat, die am Nachmittag über Bord geworfen wurden.

Der Kommandant der „Baralong“ ließ die „Nicosian“ einige Meilen nach Avonmouth zu schleppen und darauf deren bei ihm zurückgebliebene Mannschaft an Bord der „Nicosian“ zurückbringen; zugleich sendete er einen Brief an den Kapitän der „Nicosian“, worin er diesen ersuchte, seiner Mannschaft, insbesondere den darunter befindlichen Amerikanern, einzuschärfen, weder bei ihrer Ankunft in Liverpool noch bei ihrer Rückkehr nach Amerika etwas über die Angelegenheit verlauten zu lassen. Der Brief, den der Zeuge *Curran* selbst gelesen hat, war unterzeichnet: Captain *William McBride*, H. M. S. „Baralong“. Daß der fremde Dampfer „Baralong“ hieß, hat auch der Zeuge *Hightower*, während er sich an Bord dieses Schiffes befand, von einem Steward des Dampfers erfahren, während der Zeuge *Palen* bekundet, daß er beim Verlassen des fremden Schiffes an seinem Bug diesen Namen in schwer lesbaren Buchstaben gelesen habe.

Die Aussagen der sechs Zeugen werden im wesentlichen von dem 18 Jahre alten Zeugen *Larimore Holland* bestätigt, dessen eidliche Aussage vor dem öffentlichen Notar *Frank S. Carden* in der Grafschaft Hamilton im Staate Tennessee am 12. Oktober 1915 abgegeben worden ist. Der Zeuge, der sich als Heizer auf der „Baralong“ befand, hat den unerhörten Vorfall an Bord dieses Schiffes miterlebt. Auch nach seinen Angaben hatte die „Baralong“ die amerikanische Flagge gesetzt und war, von der „Nicosian“ gedeckt, auf den Schauplatz zugefahren, wo sie, sobald das Unterseeboot sichtbar wurde, das Feuer auf dieses eröffnete und es so zum Sinken brachte. Er bestätigt ferner, daß etwa 15 Leute der Besatzung des Unterseeboots,

als dieses sank, über Bord sprangen und, teils im Wasser schwimmend, teils beim Versuch, an den Tauen der „Nicosian“ hinaufzuklettern, von dem Geschütz- und Gewehrfeuer der „Baralong“ getötet wurden. Wenn seine Aussage in einzelnen Punkten von den übrigen Zeugenaussagen abweicht, so hat das seinen Grund offenbar darin, daß er die Vorgänge nur zum Teil selbst gesehen hat, während er andere Vorgänge, insbesondere die an Bord der „Nicosian“, anscheinend nur vom Hörensagen weiß.

Auf Grund des vorstehenden Materials kann es keinem Zweifel unterliegen, daß der Kommandant des britischen Hilfskreuzers „Baralong“, *McBride*, der ihm unterstellten Mannschaft den Befehl gegeben hat, hilf- und wehrlose deutsche Seeleute nicht zu Gefangenen zu machen, sondern sie feige zu ermorden, sowie daß seine Mannschaft den Befehl befolgt und sich dadurch des Mordes mitschuldig gemacht hat.

Die deutsche Regierung teilt diese furchtbare Tat der britischen Regierung mit und nimmt bestimmt an, daß diese, nachdem sie von dem Sachverhalt und den anliegenden Verhandlungen Kenntnis genommen hat, unverzüglich den Kommandanten und die beteiligte Mannschaft des Hilfskreuzers „Baralong“ wegen Mordes zur Verantwortung ziehen und nach den Kriegsgesetzen bestrafen wird. Sie erwartet in kürzester Frist eine Aeußerung der britischen Regierung, daß diese das Verfahren zur Sühnung des empörenden Vorfalles eingeleitet hat; demnächst erwartet sie eine eingehende Aeußerung über das Ergebnis des nach Möglichkeit zu beschleunigenden Verfahrens, um sich selbst davon überzeugen zu können, daß die Tat durch eine ihrer Schwere entsprechende Strafe geahndet worden ist. Sollte sie sich in ihrer Erwartung täuschen, so würde sie sich zu schwerwiegenden Entschließungen wegen Vergeltung des ungesühnten Verbrechens genötigt sehen.

Berlin, den 28. November 1915.

Nr. 1964. Gerard an Lansing, 2. Dezember 1915. Uebermittlung der deutschen Note vom 29. November 1915 zum „William P. Frye“-Fall.

(**E. W. 3,** S. 314—318.)

American Embassy, Berlin, December 2, 1915.

Sir: With reference to my telegram of even date and to previous correspondence on the subject of the claim for damages for the sinking of the American merchantman „William P. Frye“, I have the honor to transmit to you herewith a copy and translation of a note received from the Imperial Foreign Office, dated November 29, 1915, which replies to a note which I addressed to the Imperial Foreign Office on October 14, 1915, pursuant to the instructions contained in your telegram No. 2291, of October 12, 1915.

A copy and translation of the draft a compromis submitted by the Imperial German Government is likewise transmitted herewith.

I have, etc. *Gerard.*

(Inclosure — Translation.)

The German Minister for Foreign Affairs to Ambassador *Gerard.*

Berlin, November 29, 1915.

The undersigned has the honor to inform His Excellency, Mr. *James W. Gerard*, Ambassador of the United States of America, in reply to the note of October 14, F. O. No. 5671, relative to indemnity for the sinking of the

American merchant vessel „William P. Frye“, as well as to the settlement by arbitration of the difference of opinion which has arisen on this occasion, as follows:

With regard first to the ascertainment of indemnity for the vessel sunk, the German Government is in agreement with the American Government in principle that the amount of damages be fixed by two experts, one each to be nominated by the German and the American Governments. The German Government regrets that it can not comply with the wish of the American Government to have the experts meet in Washington, since, the expert nominated by it, Dr. *Greve*, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

The German Government likewise regrets that it can not assent at this time to the nomination of an umpire as desired by the American Government, for apart from the fact that in all probability the experts will reach an agreement in the case of the „William P. Frye“ with the same facility as was the case with similar negotiations with other neutral Governments, the assent of the German Government to the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisement of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature.

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would be to arrange the fixing of damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

With regard to the arbitral treatment of the difference of opinion relative to the interpretation of certain stipulations of the Prussian-American commercial treaties, the German Government has drawn up the inclosed draft of a compromis, which would have to be worded in the German and English languages and drawn up with due consideration of the two alternating texts. It is true that the draft does not accommodate the suggestions of the American Government so far as it is not in accordance with the rules of summary procedure provided by chapter 4 of The Hague Arbitration Convention, but with the rules of regular procedure. The summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed for over 100 years. Pursuant to the agreement made, any proposed amendments would have to be discussed between the Foreign Office and the American Embassy, and oral discussions would appear to be advisable.

Until the decision of the permanent court of arbitration, the German naval forces will sink only such American vessels as are loaded with absolute contraband, when the preconditions provided by the Declaration of London are present. In this the German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that

the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

The undersigned begs to give expression to the hope that it will be possible for the two Governments to reach a complete understanding regarding the case of the „William P. Frye" on the above basis, and avails himself of this opportunity to renew to His Excellency, the Ambassador, the assurance of his highest consideration. *von Jagow.*

(Translation.)

Arbitration compromis.

The Imperial German Government and the Government of the United States of America having reached an agreement to submit to a court of arbitration the difference of opinion which has arisen, occasioned by the sinking of the American merchant vessel „William P. Frye" by a German warship, in respect of the interpretation of certain stipulations of the Prussian-American treaties of amity and commerce, the undersigned, duly authorized for this purpose, have agreed to the following compromis:

Article I. A court of arbitration composed in accordance with the following stipulations is charged with the decision of the legal question:

Whether according to the treaties existing between the parties, in particular Article XIII of the Prussian-American treaty of amity and commerce of July 11, 1799, the belligerent contracting party is prevented from sinking merchant vessels of the neutral contracting party for carrying contraband when such sinking is permissible according to general principles of international law.

Article II. The court of arbitration shall be composed of five arbitrators to be chosen from among the members of the permanent tribunal of arbitration at The Hague.

Each government will choose two arbitrators, of whom only one may be a national of such country, as soon as possible, at the latest within two weeks from the day this compromis is signed. The four arbitrators thus nominated shall choose an umpire within four weeks after they have been notified of their nomination; in case of an equal vote the president of the Swiss federal council shall be requested to select the umpire.

Article III. On March 1, 1916, each party shall transmit to the bureau of the permanent tribunal of arbitration 18 copies of its argument with authenticated copies of all documents and correspondence on which it intends to rely in the case. The bureau will arrange without delay for the transmission to the arbitrators and to the parties, each arbitrator to receive two copies, each party three copies. Two copies shall remain in the archives of the bureau.

On May 1, 1916, the parties shall deposit their countercases with the supporting evidence and their statements in conclusion.

Article IV. Each party shall deposit with the international bureau at the latest on March 1, 1916, the sum of 3000 gulden of The Netherlands toward the costs of the arbitral procedure.

Article V. The court of arbitration shall meet at The Hague on June 15, 1916, and proceed immediately to examine the dispute.

Article VI. The parties may make use of the German or the English language.

The members of the court may use the German or the English language as they may choose. The dicisions of the court shall be written in both languages.

Article VII. Each party shall be represented by a special agent whose duty shall be to act as an intermediary between the party and the court. These agents shall furnish the court any explanations which the court may demand of them; they may submit any legal arguments which they may consider advisable for the defense of their case.

Article VIII. The stipulations of the convention of October 18, 1907, for the pacific settlement of international disputes, shall be applied to this arbitral procedure, in so far as nothing to the contrary is provided by the above compromis.

Done in duplicate at Berlin on the — day of —.

Nr. 1965. Lansing an den deutschen Botschafter, 4. Dezember 1915. Mitteilung, daß das Verbleiben des Militär-Attaché von Papen und des Marine-Attaché Boy-Ed nicht länger erwünscht ist.

(**E. W. 3,** S. 325.)

Department of State, Washington, December 4, 1915.

Excellency: Confirming my conversation with yon on December first, I have the honor to state that various facts and circumstances having come to the knowledge of the Government of the United States as to the connection of Captain *Boy-Ed*, Naval Attaché, and Captain *von Papen*, Military Attaché, of the Imperial German Embassy, with the illegal and questionable acts of certain persons within the United States, the President reached the conviction that the continued presence of these gentlemen as Attachés of the Embassy would no longer serve the purpose of their mission, and would be unacceptable to this Government.

The President, therefore, directed me to notify Your Excellency, as I did orally, that Captain *Boy-Ed* and Captain *von Papen* are no longer acceptable to the Government of the United States as Attachés of His Imperial Majesty's Embassy at Washington, and to request that your Excellency's Government withdraw them immediately from their official connection with the Imperial German Embassy.

As I informed you at the time of our interview, the Government of the United States deeply regrets that this action has become necessary and believes that the Imperial Government will realize that this Government has, in view of all the circumstances, no alternative course consistent with the interests of the two Governments in their relations with each other.

Accept, etc. *Robert Lansing.*

Nr. 1966. Lansing an den deutschen Botschafter, 10. Dezember 1915. Dringende Forderung der Abberufung der Attachés von Papen und Boy-Ed.

(**E. W. 3,** S. 325—326.)

Department of State, Washington, December 10, 1915.

My dear Mr. Ambassador: On December 1st I informed Your Excellency that Captain *Boy-Ed*, the Naval Attaché of your Embassy, and Captain

von Papen, the Military Attaché, were no longer personæ gratæ to my Government and requested that the Imperial Government immediately recall the two attachés.

As ten days have passed without the request of this Government being complied with and without communication from you on the subject other than your personal letter of the 5th instant, which in no way affected the fact that the two attachés were unacceptable or presented a ground for delay, I feel compelled to direct your attention to the expectation of this Government that its request would be immediately granted.

I trust, my dear Mr. Ambassador, that you appreciate the situation and will urge upon your Government a prompt compliance with the request in order that this Government may not be compelled to take action without awaiting the recall of the attachés, an action which this Government does not desire to take but will be forced to take unless the Imperial Government meets the express wish of this Government without further delay. I need not impress upon Your Excellency the desirability of avoiding a circumstance which would increase the embarrassment of the present situation.

I am, etc. *Robert Lansing.*

Nr. 1967. Der deutsche Botschafter an Lansing, 10. Dezember 1915. Deutsches Einverständnis mit der Abberufung der Attachés von Papen und Boy-Ed und Bitte um sicheres Geleit nach Deutschland.

(**E. W. 3,** S. 326.)

German Embassy, Washington, December 10, 1915.

Mr. Secretary of State: In reply to your note No. 1686 of the 4th of this month, I have the honor to inform Your Excellency that his Majesty the Emperor and King has been most graciously pleased to recall the Naval Attaché of the Imperial Embassy, Captain *Boy-Ed*, and the Military Attaché Captain *von Papen*.

I am instructed to beg Your Excellency to obtain for the above-named gentlemen and their servants, *Gustav Winkow* and *Otto Mahlow*, a safe conduct for the return trip to Germany from the powers at war with the German Empire, and also to insure the trip of the successors of those gentlemen to the United States in the event of their being appointed be His Majesty.

Accept, etc. *J. Bernstorff.*

Nr. 1968. Lansing an den deutschen Botschafter, 11. Dezember 1915. Empfangsbestätigung der deutschen Note vom 10. Dezember 1915. Die amerikanische Regierung wird um sicheres Geleit für die Attachés von Papen und Boy-Ed bemüht sein.

(**E. W. 3,** S. 326—327.)

Department of State, Washington, December 11, 1915.

Excellency: I have the honor to acknowledge the receipt of Your Excellency's note of the 10th instant, notifying me that His Majesty the Emperor and King has been pleased to recall Captain *Boy-Ed*, the Naval-

Attaché, and Captain *von Papen*, the Military Attaché, of the Imperial German Embassy, pursuant to this Government's request of the 4th instant.

In accordance with Your Excellency's wishes, I have had the honor to request of the powers at war with the German Empire safe conducts for these gentlemen and their servants, *Gustav Winkow* and *Otto Mahlow*. Upon the receipt of notice that His Majesty the Emperor and King has designated the successors of these gentlemen, and after the Government of the United States has decided upon their acceptability, it will be my pleasure to request the powers at war with the German Empire to provide safe conducts for their passage to the United States.

Accept, etc. *Robert Lansing.*

Nr. 1969. Englische Antwort vom 14. Dezember 1915 auf das deutsche Memorandum vom 28. November 1915 über den „Baralong"-Fall.

(**Misc. 1 [1916]***), S. 16—17.)

Sir *Edward Grey* to Mr. *Page*, United States Ambassador in London.

Foreign Office, December 14, 1915.

Your Excellency,

I have had the honour of receiving your communication of the 6th instant, covering a memorandum of the German Government in regard to incidents alleged to have attended the destruction of a German submarine and its crew by H. M. auxiliary cruiser „Baralong" on the 19th August last.

The German Government base on these alleged incidents a demand that the commanding officer and other responsible parties on board H. M. S. „Baralong" shall be brought to trial for murder and duly punished.

His Majesty's Government note with great satisfaction, though with some surprise, the anxiety now expressed by the German Government that the principles of civilised warfare should be vindicated, and that due punishment should be meted out to those who deliberately disregard them. It is true that the incident which has suddenly reminded the German Government that such principles exist is one in which the alleged criminals were British and not German. But His Majesty's Government do not for a moment suppose that it is the intention to restrict unduly the scope of any judicial investigation which it is thought proper to institute.

Now it is evident that to single out the case of the „Baralong" for particular examination would be the height of absurdity. Even were the allegations on which the German Government rely accepted as they stand (and His Majesty's Government do not so accept them), the charge against the commander and crew of the „Baralong" is negligible compared with the crimes which seem to have been deliberately committed by German officers, both on land and sea, against combatants and non-combatants.

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*) **Englisches Weißbuch:**

Miscellaneous. No. 1 [1916]. Memorandum of the German Government in regard to incidents alleged to have attended the destruction of a German submarine and its crew by His Majesty's auxiliary cruiser „Baralong" on August 19, 1915, and reply of His Majesty's government thereto.

Presented to both Houses of Parliament by Command of his Majesty. January 1916. London 1916.

(Angeführt als **Misc. 1 [1916]**.) Herausgeber.

Doubtless the German Government will urge that the very multitude of these allegations would so overload any tribunal engaged in their examination as utterly to defeat the ends of justice. If, for example, a whole army be charged with murder, arson, robbery, and outrage, it is plainly impossible to devote a separate enquiry to all the individuals who have taken a share in these crimes. These practical considerations cannot be ignored and His Majesty's Government admit their force. They would, therefore, be prepared, for the present, to confine any judicial investigation to charges made against German and British officers at sea; and if even this restriction were thought insufficient, they would be content to call attention to three naval incidents which occurred during the same forty-eight hours in the course of which the „Baralong" sank the submarine and rescued the „Nicosian".

The first incident relates to a German submarine which fired a torpedo into the „Arabic" and sank her. No warning was given to the merchant vessel; no efforts were made to save its unresisting crew; forty-seven non-combatants were ruthlessly sent to their death. It is understood that this act of barbarism, though in perfect harmony with the earlier policy of the German Government, was contrary to orders recently issued. This, however, if true, only increases the responsibility of the submarine commander; and His Majesty's Government have received no information indicating that the authorities have pursued in his case the course they recommend in the case of the crew of the „Baralong", by trying him for murder.

The second incident occurred on the same day. A German destroyer found a British submarine stranded on the Danish coast. The submarine had not been pursued there by the destroyer; she was in neutral waters; she was incapable either of offence or defence. The destroyer opened fire upon her; and when her crew attempted to swim ashore the destroyer fired upon them also with no apparent object but to destroy a helpless enemy. There was here no excuse of hot blood; the crew of the British submarine had done nothing to rouse the fury of their opponents. They had not just murdered forty-seven innocent non-combatants. They wer not taking possession of a German ship, or committing any act injurious to German interests. So far as His Majesty's Government know the facts, the officers and men of this destroyer committed a crime against humanity and the laws of war, which is at least as worthy of judicial enquiry as any other which has occurred during the course of recent naval operations.

The third incident occurred some forty-eight hours later. The steamer „Ruel" was attacked by a German submarine. The ship which had made no resistance began to sink, the crew took to their boats, and while endeavouring to save themselves were fired upon both with shrapnel and rifle fire. One man was killed, eight others (including the master) were severely wounded. The sworn testimony on which these statements are based shows no reason whatever which could justify this cold-blooded and cowardly outrage.

It seems to His Majesty's Government that these three incidents, almost simultaneous in point of time, and not differing greatly in point of character, might, with the case of the „Baralong", be brought before some impartial court of investigation, say, for example, a tribunal composed of officers belonging to the United States navy. If this were agreed to, His Majesty's Government would do all in their power to further the enquiry, and to do their part in taking such further steps as justice and the findings of the Court might seem to require.

His Majesty's Government do not think it necessary to make any reply to the suggestion that the British navy has been guilty of inhumanity. According to the latest figures available, the number of German sailors rescued

from drowning, often in circumstances of great difficulty and peril, amounts to 1150. The German navy can show no such record — perhaps through want of opportunity.

I have, &c. *E. Grey.*

Nr. 1970. Lansing an den deutschen Botschafter, 15. Dezember 1915. Mitteilung über Schritte der englischen und amerikanischen Botschafter zwecks Beschaffung sicheren Geleits für die Attachés von Papen und Boy-Ed.

(**E. W. 3,** S. 327.)

Department of State, Washington, December 15, 1915.

My dear Mr. Ambassador: I am advised by the British and French Ambassadors that safe conducts will be furnished to Captains *Boy-Ed* and *von Papen* for their return to Germany, it being understood that they will take the southern route to Holland. The Ambassadors request information as to the vessel and date of sailing of the two gentlemen, which I hope you will furnish at your earliest convenience. It is also understood that they will, of course, perform no unneutral act, such as carrying dispatches to the German Government.

I am, etc. *Robert Lansing.*

Nr. 1971. Lansing an den deutschen Botschafter, 18. Dezember 1915. Uebersendung der Pässe für die Attachés von Papen und Boy-Ed.

(**E. W. 3,** S. 327.)

Department of State, Washington, December 18, 1915.

Excellency: I have the honor to acknowledge the receipt of your note of the 10th instant, by which I am advised that His Majesty the Emperor has recalled Captain *Boy-Ed* and Captain *von Papen*, Naval Attaché and Military Attaché, respectively, of your Embassy, and requested to obtain for these officers a safe conduct for their return trip to Germany.

I did not fail to place myself at once in communication with the British and French Ambassadors on the subject, and I have now the honor to transmit to Your Excellency two authenticated sets of copies of notes from them, which I am assured will be regarded by officers of the Allied cruisers as safe conducts, provided Captain *Boy-Ed* and Captain *von Papen* follow the south route via Holland. I further enclose a passport for each of these gentlemen.

Accept, etc. *Robert Lansing.*

Nr. 1972. Englisches Weißbuch vom 5. Januar 1916 über die Unterbindung des deutschen Handels.

(**Misc. 2 [1916]*),** S. 2—7.)

1. The object of this memorandum is to give an account of the manner in which the sea power of the British Empire has been used during the present war for the purpose of intercepting Germany's imports and exports.

***) Englisches Weißbuch:**
Miscellaneous No. 2 [1916]. Statement of the measures adopted to intercept the sea-borne commerce of Germany. Presented to both Houses of Parliament by Command of His Majesty. January 1916. London 1916.

(Angeführt als **Misc. 2 [1916]**.) Herausgeber.

I. Belligerent Rights at Sea.

2. The means by which a belligerent who possesses a fleet has, up to the time of the present war, interfered with the commerce of his enemy are three in number:

i) The capture of contraband of war on neutral ships.
ii) The capture of enemy property at sea.
iii) A blockade by which all access to the coast of the enemy is cut off.

3. The second of these powers has been cut down since the Napoleonic wars by the Declaration of Paris of 1856, under which enemy goods on a neutral ship, with the exception of contraband of war, were exempted from capture. Enemy goods which had been loaded on British or Allied ships before the present war were seized in large quantities immediately after its outbreak; but for obvious reasons such shipments ceased, for all practical purposes, after the 4th August 1914, and this particular method of injuring the enemy may therefore, for the moment, be disregarded.

No blockade of Germany was declared until March 1915, and therefore up to that date we had to rely exclusively on the right to capture contraband.

II. Contraband.

4. By the established classification goods are divided into three classes:
a) Goods primarily used for warlike purposes.
b) Goods which may be equally used for either warlike or peaceful purposes.
c) Goods which are exclusively used for peaceful purposes.

5. Under the law of contraband, goods in the first class may be seized if they can be proved to be going to the enemy country; goods in the second class may be seized if they can be proved to be going to the enemy Government or its armed forces; goods in the third class must be allowed to pass free. As to the articles which fall within any particular one of these classes, there has been no general agreement in the past, and the attempts of belligerents to enlarge the first class at the expense of the second, and the second at the expense of the third, have led to considerable friction with neutrals.

6. Under the rules of prize law, as laid down and administered by Lord *Stowell*, goods were not regarded as destined for an enemy country unless they were to be discharged in a port in that country; but the American prize courts in the Civil War found themselves compelled by the then existing conditions of commerce to apply and develop the doctrine of continuous voyage, under which goods which could be proved to be ultimately intended for an enemy country were not exempted from seizure on the ground that they were first to be discharged in an intervening neutral port. This doctrine, although hotly contested by many publicists, had never been challenged by the British Government, and was more or less recognised as having become part of International Law.

7. When the present war broke out it was thought convenient, in order, among other things, to secure uniformity of procedure among all the Allied forces, to declare the principles of international law which the Allied Governments regarded as applicable to contraband and other matters. Accordingly, by the Orders in Council of the 20th August and the 29nd October, 1914, and the corresponding French Decrees, the rules set forth in the Declaration of London were adopted by the French and British Governments with certain modifications. As to contraband, the lists of contraband and free goods in the Declaration were rejected, and the doctrine of continuous voyage was applied not only to absolute contraband, as the Declaration already provided, but also to conditional contraband, if such

goods were consigned to order, or if the papers did not show the consignee of the goods, or if they showed a consignee in enemy territory.

8. The situation as regards German trade was as follows: Direct trade to German ports (save across the Baltic) had almost entirely ceased, and practically no ships were met with bound to German ports. The supplies that Germany desired to import from overseas were directed to neutral ports in Scandinavia, Holland, or (at first) Italy, and every effort was made to disguise their real destination. The power which we had to deal with this situation in the circumstances then existing was:

i) We had the right to seize articles of absolute contraband if it could be proved that they were destined for the enemy country, although they were to be discharged in a neutral port.

ii) We had the right to seize articles of conditional contraband if it could be proved that they were destined for the enemy Government or its armed forces, in the cases specified above, although they were to be discharged in a neutral port.

9. On the other hand, there was no power to seize articles of conditional contraband if they could not be shown to be destined for the enemy Government or its armed forces, or non-contraband articles, even if they were on their way to a port in Germany, and there was no power to stop German exports.

10. That was the situation until the actions of the German Government led to the adoption of more extended powers of intercepting German commerce in March 1915. The Allied Governments then decided to stop all goods which could be proved to be going to, or coming from, Germany. The state of things produced is in effect a blockade, adapted to the condition of modern war and commerce, the only difference in operation being that the goods seized are not necessarily confiscated. In these circumstances it will be convenient, in considering the treatment of German imports and exports, to omit any further reference to the nature of the commodities in question as, once their destination or origin is established, the power to stop them is complete. Our contraband rights, however, remain unaffected, though they, too, depend on the ability to prove enemy destination.

III. German Exports.

11. In carrying out our blockade policy great importance was from the outset attached to the stoppage of the enemy's export trade, because it is clear that to the extent that his exports can be stopped, and his power to establish credits for himself in neutral countries curtailed, his imports from such neutral countries will more or less automatically diminish. The identification of articles of enemy origin is, thanks to the system of certificates of origin which has been established, a comparatively simple matter, and the degree to which the policy of stopping German and Austrian oversea exports has been successful can best be judged by looking at the statistics of German and Austrian imports into America.

12. The normal imports into the United States of America from Germany and Austria, before the war, for the seven months March to September inclusive, are valued approximately and in round figures at 124 000 000 dollars (24 800 000 *l.*). From March to September inclusive, this year's imports into the United States of America from those countries were valued at approximately 22 000 000 dollars (4 400 000 *l.*). This sum includes the goods which were already in neutral ports in the way of shipment or in transit when the further measures adopted by the Allied Governments were announced in March, and also a considerable proportion of those which have been allowed to pass in the circumstances mentioned in paragraph 14. A certain amount

is also to be accounted for by goods received from Germany and Austria by parcel post, which it was not originally possible to stop effectively. Steps have now been taken to close this channel to enemy exports. The latest returns available, those for September, show that over 92 per cent, of the German exports to the United States of America have been stopped.

13. The above figures allow of but one conclusion: the oversea exports of Germany and Austria are very near extinction. It is of special interest to note that in the main these exports have not been merely diverted to the neutral countries adjacent to Germany. The imports which those countries have received from Germany have not in fact exceeded the normal quantities of previous years.

14. The object of the policy being to injure the enemy, the Allied Governments have in certain cases permitted the export of goods which had been ordered before the 1st March, and had been either paid for prior to that date or ordered before that date on terms which rendered the neutral purchaser liable to pay whether the goods reached him or not. It is clear that in these cases no harm would be done to the enemy or, pressure put upon him, by not allowing the goods to pass. On the contrary, he would, if that were done, both receive his price and retain the goods and their possible use. The total value of the goods with which the Allied Governments have undertaken not to interfere in such cases up to the end of 1915 is approximately 3000000 *l*. If the goods allowed to pass under this arrangement were deducted from the total enemy exports to the United States of America, it would be seen that the amount of German exports which serve to increase the resources of the enemy is almost negligible.

IV. German Imports.

15. As regards German imports, however, the problem is much more complicated. Its central difficulty is that of distinguishing between goods with an enemy destination from those with a genuine neutral destination. A belligerent who makes use of his naval power to intercept the commerce of his enemy has to justify his action in each particular case before a Prize Court, which is bound by international law and not by the ordinary law of the country in which it sits. It is not sufficient for him to stop a neutral vessel and remove from her such articles as he may believe to be intended for his enemy; it is necessary subsequently to demonstrate in a court of law that the destination of the goods was such as to justify the belligerent in seizing them. If this is not proved, the goods will be released, and damages may be awarded against the captor. It must also be remembered that, in order to justify the seizure of a particular consignment, it is necessary to satisfy the Prize Court of the enemy destination of that consignment, and evidence of a general nature, if unaccompanied by proofs directly bearing on a particular case, is not enough. All this applies as much to goods seized as contraband as it does to those seized for breach of blockade.

16. In earlier wars the production of the necessary proof was a comparatively simple matter. Owing to the difficulties of inland transport before the introduction of railways, goods for the enemy country were usually carried to ports in that country and the ship's papers showed their destination. When, therefore, the ship had been captured, the papers found on board were generally sufficient to dispose of the case. In the old cases of contraband, the question at issue was usually not where the goods were in fact going to, but whether their nature was such as to make them liable to condemnation in view of the destination shown on the ship's papers. Even in the American Civil War the difficulty of proving destination was usually not

serious, because the neutral harbours through which the supply of goods for the Confederate States was carried on were in normal time ports of comparatively small importance, and it could be shown that in normal times there was no local market for goods of such quantities and character.

17. The case has been far different in the present war. The goods which Germany attempts to import are consigned to neutral ports, and it need hardly be said that the papers on board convey no suggestion as to their ultimate destination. The conditions of modern commerce offer almost infinite opportunities of concealing the real nature of a transaction, and every device which the ingenuity of the persons concerned, or their lawyers, could suggest has been employed to give to shipments intended for Germany the appearance of genuine transactions with a neutral country. The ports to which the goods are consigned, such as Rotterdam and Copenhagen, have in peace time an important trade, which increases the difficulty of distinguishing the articles ultimately intended to reach the enemy country from those which represent importation into the neutral country concerned for its own requirements. If action had to be taken solely on such information as might be gathered by the boarding officer on his visit to the ship, it would have been quite impossible to interfere to an appreciable extent with German imports, and the Allied Governments would therefore have been deprived of a recognised belligerent right.

18. In these circumstances, unless the Allied Governments were prepared to seize and place in the Prize Court the whole of the cargo of every ship which was on her way to a neutral country adjacent to Germany, and to face the consequences of such action, the only course open to them was to discover some test by which goods destined for the enemy could be distinguished from those which were intended for neutral consumption.

19. The first plan adopted for this purpose is to make use of every source of information available in order to discover the real destination of sea-borne goods, and to exercise to the full the right of stopping such goods as the information obtained showed to be suspect, while making a genuine and honest attempt to distinguish between *bonâ fide* neutral trade and trade which, although in appearance equally innocent, was in fact carried on with the enemy country.

20. For this purpose a considerable organisation has been established in the Contraband Committee, which sits at the Foreign Office, and works in close touch with the Admiralty, Board of Trade, and War Trade Department. Nearly every ship on her way to Scandinavian or Dutch ports comes or is sent into a British port for examination, and every item of her cargo is immediately considered in the light of all the information which has been collected from the various sources open to the Government, and which, after nearly a year and a half of war, is very considerable. Any items of cargo as to which it appears that there is a reasonable ground for suspecting an enemy destination are placed in the Prize Court, while articles as to the destination of which there appears to be doubt are detained pending further investigation.

21. If, however, this were all that could be done, there is little doubt that it would be impossible to effect a complete cutting off of the enemy's supplies. For instance, there are many cases in which it would be difficult to establish in the Prize Court our right to stop goods, although they or their products, perhaps after passing through several hands, would in all probability ultimately reach the enemy. To indicate more plainly the nature of these difficulties would obviously be to assist the enemy and the neutral traders who desire to supply him; but the difficulties exist, and, in order

to meet them, it has been necessary to adopt other means by which neutral may be more easily distinguished from enemy trade, and the blockade of Germany made more effective than it would be if we relied solely on the right to stop goods which could be proved to be intended for the enemy.

V. Guarantees by Importers.

22. Importers in neutral countries adjacent to Germany have found that the exercise of our belligerent rights to some extent impedes the importation of articles which they genuinely need for the requirements of their own country, and consequently they have in many cases shown willingness to make agreements with this country which on the one hand secure their receiving the supplies which they need, while on the other guaranteeing to us that goods allowed to pass under the terms of the agreement will not reach the enemy. The neutral Governments themselves have as a rule considered it inadvisable to make agreements on such points with His Majesty's Government; they have on the whole confined their action to prohibiting the export of certain articles which it was necessary for them to import from abroad. Inasmuch, however, as in most cases they reserved the right to grant exemptions from such prohibitions, and as trade between the Scandinavian countries themselves was usually excluded from the scope of such measures, the mere fact of the existence of such prohibitions could not be considered a sufficient safeguard that commodities entering the country would not ultimately reach Germany.

23. In some neutral countries, however, agreements have been made by representative associations of merchants, the basis of which is that the associations guarantee that articles consigned to or guaranteed by them, and their products, will not reach the enemy in any form, while His Majesty's Government undertake not to interfere with shipments consigned to the association, subject to their right to institute prize proceedings in exceptional cases where there is evidence that an attempt has been made to perpetrate a fraud upon the association, and to pass the goods ultimately through to Germany. The first of these agreements was made with the Netherlands Oversea Trust, and similar agreements, either general or dealing with particular commodities of special importance, such as rubber and cotton, have been made with bodies of merchants in Sweden, Norway, Denmark, and Switzerland. The details of these agreements it is impossible to give more fully, but the general principle is that the associations, before allowing goods to be consigned to them, require the would be receivers to satisfy them, by undertakings backed by sufficient pecuniary penalties, that the goods will not leave the country, either in their original shape or after any process of manufacture, and notwithstanding any sales of which they may be the subject.

In some cases these agreements provide that the associations shall themselves be bound to detain or return goods believed by His Majesty's Government to be destined for the enemy; so that it does not follow that cargoes allowed to proceed to a neutral port will necessarily be delivered to the consignees.

24. The existence of such agreements is of great value in connection with the right of seizure, because the fact of articles not being consigned to or guaranteed by the association, or being consigned to it without the necessary consent, at once raises the presumption that they are destined for the enemy.

VI. Agreements with Shipping Lines.

25. Delays caused by the elaborate exercise of the belligerent right of visit and search are very irksome to shipping; and many shipping lines who

carry on regular services with Scandinavia and Holland have found it well worth their while to make agreements with His Majesty's Government under which they engage to meet our requirements with regard to goods carried by them, in return for an undertaking that their ships will be delayed for as short a time as possible for examination in British ports. Several agreements of this kind have been made; the general principle of them is that His Majesty's Government obtain the right to require any goods carried by the line, if not discharged in the British port of examination, to be either returned to this country for Prize Court proceedings, or stored in the country of destination until the end of the war, or only handed to the consignees under stringent guarantees that they or their products will not reach the enemy. The companies obtain the necessary power to comply with these conditions by means of a special clause inserted in all their bills of lading, and the course selected by the British authorities is determined by the nature of the goods and the circumstances of the case. In addition to this, some of these companies make a practice, before accepting consignments of certain goods, of enquiring whether their carriage is likely to lead to difficulties, and of refusing to carry them in cases where it is intimated that such would be the case. The control which His Majesty's Government are in a position to exercise under these agreements over goods carried on the lines in question is of very great value.

VII. Bunker Coal.

26. Much use has been made recently of the power which the British Government are in a position to exercise owing to their ability to refuse bunker coal to neutral ships in ports in the British Empire. Bunker coal is now only supplied to neutral vessels whose owners are willing to comply with certain conditions which ensure that no vessels owned, chartered, or controlled by them trade with any port in an enemy country, or carry any cargo which proceeds from, or is destined for, an enemy country. The number of owners who accept these conditions increases almost daily. The use of this weapon has already induced several shipping lines which before the war maintained regular services between Scandinavian and German Baltic ports to abandon their services.

VIII. Agreements in respect of Particular Commodities.

27. Special agreements have been made in respect of particular articles the supply of which is mainly derived from the British Empire or over which the British Government are in a position to exercise control. The articles covered by such agreements. the object of which is to secure such control over the supply of these materials as will ensure that they or their products will not reach the enemy, are rubber, copper, wool, hides, oil, tin, plumbago, and certain other metals.

IX. Rationing.

28. Though the safeguards already described do much to stop entirely all trade to and from Germany, yet, in spite of all of them, goods may and do reach our enemies, and, on the other hand, considerable inconvenience is caused to genuinely neutral trade. It is to avoid both evils that His Majesty's Government have for months past advocated what is called rationing, as by far the soundest system both for neutrals and belligerents. It is an arrangement by which the import of any given article into a neutral country is limited to the amount of its true domestic requirements. The best way of carrying this arrangement into effect is probably by agreement with some body representing either one particular trade or the whole commerce of the

country. Without such an agreement there is always a risk that, in spite of all precautions, the whole rationed amount of imports may be secured by traders who are really German agents. These imports might go straight on to Germany, and there would then be great practical difficulty in dealing with the next imports destined, it may be, for genuine neutral traders. If they were to be stopped, there would be great complaint of injustice to neutrals, and yet unless that be done the system would break down. Accordingly, agreements of this kind have been concluded in various countries, and His Majesty's Government are not without hope that they may be considerably extended in the future. Even so the security is not perfect. An importer may always let his own countrymen go short and re-export to Germany. The temptation to do so is great, and as our blockade forces prices up is increasing. But the amount that gets through in this way cannot be large, and the system is in its working so simple that it minimises the delays and other inconveniences to neutral commerce inseparable from war. Of the details of these arrangements it is impossible to speak. But their principle appears to offer the most hopeful solution of the complicated problems arising from the necessity of exercising our blockade through neutral countries.

X. Results.

29. As to the results of the policy described in this memorandum, the full facts are not available. But some things are clear. It has already been shown that the export trade of Germany has been substantially destroyed. With regard to imports, it is believed that some of the most important, such as cotton, wool, and rubber, have for many months been excluded from Germany. Others, like fats and oils and dairy produce, can only be obtained there, if at all, at famine prices. All accounts, public and private, which reach His Majesty's Government agree in stating that there is considerable discontent amongst sections of the German population, and there appear to have been food riots in some of the larger towns. That our blockade prevents any commodities from reaching Germany is not, and under the geographical circumstances cannot be true. But it is already successful to a degree which good judges both here and in Germany thought absolutely impossible, and its efficiency is growing day by day. It is right to add that these results have been obtained without any serious friction with any neutral Government. There are obvious objections to dwelling on the importance to us of the goodwill of neutral nations; but anyone who considers the geographical, military, and commercial situation of the various countries will certainly not underrate the value of this consideration. There is great danger when dealing with international questions in concentrating attention exclusively on one point in them, even if that point be as vital as is undoubtedly the blockade of Germany.

XI. Conclusion.

30. To sum up, the policy which has been adopted in order to enforce the blockade of Germany may be described as follows:

i) German exports to oversea countries have been almost entirely stopped. Such exceptions as have been made are in cases where a refusal to allow the export of the goods would hurt the neutral concerned without inflicting any injury upon Germany.

ii) All shipments to neutral countries adjacent to Germany are carefully scrutinised with a view to the detection of a concealed enemy destination. Wherever there is reasonable ground for suspecting such destination, the goods are placed in the Prize Court. Doubtful consignments are detained until satisfactory guarantees are produced.

iii) Under agreements in force with bodies of representative merchants in several neutral countries adjacent to Germany, stringent guarantees are exacted from importers, and so far as possible all trade between the neutral country and Germany, whether arising overseas or in the neutral country itself, is restricted.

iv) By agreements with shipping lines and by a vigorous use of the power to refuse bunker coal, a large proportion of the neutral mercantile marine which carries on trade with Scandinavia and Holland has been induced to agree to conditions designed to prevent goods carried in these ships from reaching the enemy.

v) Every effort is being made to introduce a system of rationing which will ensure that the neutral countries concerned only import such quantities of the articles specified as are normally imported for their own consumption.

Nr. 1973. Amerikanisches Memorandum vom 10. Januar 1916 an England über die Beschlagnahme der Post an Bord neutraler Schiffe.

(**Misc. 5 [1916]***), S. 8.)

Memorandum communicated by Mr. *Page*, January 10, 1916.

The Government of the United States is informed that His Britannic Majesty's authorities have removed from the Danish steamer „Oscar II" 734 bags of mails en route from the United States to Norway, Sweden, and Denmark, and that His Majesty's port authorities have also removed from the Swedish steamship „Stockholm" 58 bags of mail en route from Gothenburg to New York; that 5000 packages of merchandise, American property, were seized by the British authorities on the Danish steamer „United States" on her latest voyage to the United States, and that the authorities at Kirkwall on the 18th December last seized 597 bags of parcels mail carried by the steamship „Frederick VIII" and manifested for Norway, Sweden, and Denmark. Other similar cases might be mentioned, such as that of the steamship „Helig Olav".

The Government of the United States is inclined to regard parcelspost articles as subject to the same treatment as articles sent by express or freight in respect of belligerent search, seizure, and condemnation; but, on the other hand, the American Government holds that parcelspost articles are entitled to the usual protection of neutral trade, and that its previous protests touching the various methods and instances of interference with such trade are applicable equally to any interference with the transmission of commodities by the parcels post.

The Government of the United States is also informed that on the 20th December last the Dutch vessel „Noorderdyke" was deprived in the Downs of American mail despatched from the United States to Rotterdam, and that these mails may still be held by the British authorities; and,

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*) **Englisches Weißbuch:**
Miscellaneous. Nr 5 (1916). Correspondence with the United States Ambassador respecting the treatment of mails on neutral vessels.

Presented to both Houses of Parliament by Command of His Majesty. January 1916. London 1916.

(Angeführt als **Misc. 5 [1916]**.)

Herausgeber.

furthermore; that on the 23rd December last the whole of the mail carried by the steamship „New Amsterdam“ from the United States to the Netherlands was removed by His Majesty's authorities from that ship. Since the „New Amsterdam's“ mails included the American diplomatic pouch to the Netherlands, it seems possible that even this official bag may have been subjected to delay. The cases of the steamers „Rotterdam“ and „Eiihrok“ might also be mentioned.

The Government of the United States is unable to damit the right of His Majesty's authorities forcibly to bring into port neutral vessels plying directly between American and neutral European ports without intention of touching at British ports and there to remove or censor mails carried by them. Modern practice generally recognises that mails are not to be censored, confiscated, or destroyed on the high seas, even when carried by belligerent mail ships, and it seems certainly to follow that to bring mail ships within British jurisdiction for purposes of search and then to subject them to local regulations allowing a censorship of mails cannot be justified on the ground of national jurisdiction. In cases where neutral mail ships merely touch at British ports the Government of the United States believes tat His Majesty's authorities have no right in international law to remove the sealed mails or to censor them on board ship, since mails on such ships never rightfully come into the custody of the British mail service, which is entirely without responsibility for their transit or safety.

As a result of British action public feeling is being aroused in the United States through the loss of valuable letters, and foreign banks are refusing to cash American drafts owing to the absence of any assurance that they will travel safely in the mails. Moreover, the possible detention of official mails is an aggravating circumstance in a practice which affects American public opinion as being vexatiously inquisitorial and without compensating military advantage to Great Britain.

The Government of the United States very urgently presses for the early application of an effective remedy.

American Embassy, London, January 10, 1916.

Nr. 1974. Lansings Vorschlag vom 18. Januar 1916 über Neuregelung der Unterseeboot-Kriegführung.

(**E. W. 3,** S. 162—164.)

Informal and confidential letter from the Secretary of State to the British Ambassador*).

Department of State, Washington, January 18, 1916.

My dear Mr. Ambassador: It is matter of the deepest interest to my Government to bring to an end, if possible, the dangers to life which attend the use of submarines as at present employed in destroying enemy commerce on the high seas, since on any merchant vessel of belligerent nationality there may be citizens of the United States who have taken passage or are members of the crew, in the exercise of their recognized rights as neutrals. I assume that your excellency's Government are equally solicitous to protect their nationals from the exceptional hazards which are presented by their

*) Same, mutatis mutandis, to the Ambassador of France, the Russian Ambassador, the Ambassador of Italy, the Belgian Minister, and, on January 24, 1916, to the Japanese Ambassador.

passage on a merchant vessel through those portions of the high seas in which undersea craft of their enemy are operating.

While I am fully alive to the appalling loss of life among noncombatants, regardless of age or sex, which has resulted from the present method of destroying merchant vessels without removing the persons on board to places of safety, and while I view that practice as contrary to those humane principles which should control belligerents in the conduct of their naval operations, I do not feel that a belligerent should be deprived of the proper use of submarines in the interruption of enemy commerce since those instruments of war have proven their effectiveness in this particular branch of warfare on the high seas.

In order to bring submarine warfare within the general rules of international law and the principles of humanity without destroying its efficiency in the destruction of commerce, I believe that a formula may be found which, though it may require slight modifications of the practice generally followed by nations prior to the employment of submarines, will appeal to the sense of justice and fairness of all the belligerents in the present war.

Your excellency will understand that in seeking a formula or rule of this nature I approach it of necessity from the point of view of a neutral, but I believe that it will be equally efficacious in preserving the lives of all noncombatants on merchant vessels of belligerent nationality.

My comments on this subject are predicated on the following propositions:

1. A noncombatant has a right to traverse the high seas in a merchant vessel entitled to fly a belligerent flag and to rely upon the observance of the rules of international law and principles of humanity if the vessel is approached by a naval vessel of another belligerent.

2. A merchant vessel of enemy nationality should not be attacked without being ordered to stop.

3. An enemy merchant vessel, when ordered to do so by a belligerent submarine, should immediately stop.

4. Such vessel should not be attacked after being ordered to stop unless it attempts to flee or to resist, and in case it ceases to flee or resist, the attack should discontinue.

5. In the event that it is impossible to place a prize crew on board of an enemy merchant vessel or convoy it into port, the vessel may be sunk, provided the crew and passengers have been removed to a place of safety.

In complying with the foregoing propositions which, in my opinion, embody the principal rules, the strict observance of which will insure the life of a noncombatant on a merchant vessel which is intercepted by a submarine, I am not unmindful of the obstacles which would be met by undersea craft as commerce destroyers.

Prior to the year 1915 belligerent operations against enemy commerce on the high seas had been conducted with cruisers carrying heavy armaments. Under these conditions international law appeared to permit a merchant vessel to carry an armament for defensive purposes without losing its character as a private commercial vessel. This right seems to have been predicated on the superior defensive strenght of ships of war, and the limitation of armament to have been dependent on the fact that it could not be used effectively in offense against enemy naval vessels, whileit could defend the merchantmen against the generally inferior armament of piratical ships and privateers.

The use of the submarine, however, has changed these relations. Comparison of the defensive strength of a cruiser and a submarine shows

that the latter, relying for protection on its power to submerge, is almost defenseless in point of construction. Even a merchant ship carrying a small caliber gun would be able to use it effectively for offense against a submarine. Moreover, pirates and sea rovers have been swept from the main trade channels of the seas, and privateering has been abolished. Consequently, the placing of guns on merchantmen at the present day of submarine warfare can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament.

If a submarine is required to stop and search a merchant vessel on the high seas and, in case it is found that she is of enemy character and that conditions necessitate her destruction, to remove to a place of safety all persons on board, it would not seem just or reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.

It would, therefore, appear to be a reasonable and reciprocally just arrangement if it could be agreed by the opposing belligerents that submarines should be caused to adhere strictly to the rules of international law in the matter of stopping and searching merchant vessels, determining their belligerent nationality, and removing the crews and passengers to places of safety before sinking the vessels as prizes of war, and that merchant vessels of belligerent nationality should be prohibited and prevented from carrying any armament whatsoever.

In presenting this formula as a basis for conditional declarations by the belligerent Governments, I do so in the full conviction that your Government will consider primarily the humane purpose of saving the lives of innocent people rather than the insistence upon a doubtful legal right which may be denied on account of new conditions.

I would be pleased if you would be good enough to bring this suggestion to the attention of your Government and inform me of their views upon the subject, and whether they would be willing to make such a declaration conditioned upon their enemies making a similar declaration.

A communication similar to this one has been addressed to the Ambassadors of France, Russia, and Italy, and the Minister of Belgium at this capital.

I should add that my Government is impressed with the reasonableness of the argument that a merchant vessel carrying an armament of any sort, in view of the character of submarine warfare and the defensive weakness of undersea craft, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent Government, and is seriously considering instructing its officials accordingly.

I am, etc. *Robert Lansing.*

Nr. 1975. Der deutsche Botschafter an Lansing, 2. Februar 1916. Bericht über die Ankunft des von deutschen Seestreitkräften aufgebrachten englischen Dampfers „Appam“ in einem amerikanischen Hafen.

(**E. W. 3,** S. 331.)

German Embassy, Washington, February 2, 1916.

Mr. Secretary of State: I have the honor to inform Your Excellency that the British steamer „Appam“, captured by the German naval forces,

arrived at Newport News, Va., on the 1st of this month under the command of Lieut. *Berg* of the navy. The commanding officer intends, in accordance with Article XIX of the Prusso-American treaty of September 10, 1785, to stay in an American port until further notice.

The „Appam" has not been converted into an auxiliary cruiser, is not armed, and has made no prize under Mr. *Berg's* command. She carries on board the crews of seven enemy vessels taken by H. M. S. „Möwe" who have been transferred to her by that ship.

There is on board a locked-up military party of the enemy, whose internment in the United States I request.

The crew of the „Appam" tried to offer resistance when the ship was captured, as the guns at hand were already in place and trained on the German warship. The members of the crew are therefore to be looked upon likewise as combatants, and I have the honor to ask of Your Excellency that they too be detained in the United States until the end of the war.

Accept, etc. *J. Bernstorff.*

Nr. 1976. Lansing an den englischen Botschafter, 3. Februar 1916. Anfrage, ob sich unter der Besatzung der „Appam" Angehörige englischer Streitkräfte befinden.

(**E. W. 3,** S. 331.)

Department of State, Washington, February 3, 1916.

My dear Mr. Ambassador: Referring to our conversation of to-day in regard to the steamer „Appam" now at Norfolk in charge of a German prize crew, I have received from the collector of customs in Norfolk a list (copy of which is inclosed) of persons on board the „Appam" which the prize master asserts are in the military or naval service of His Britannic Majesty and whom he believes, therefore, should not be released from his vessel. I desire, therefore, to ask if you will be good enough to inform me as to whether any of the gentlemen named on the list are members of His Majesty's armed forces.

I am, etc. *Robert Lansing.*

Nr. 1977. Englisches Memorandum vom 4. Februar 1916 über die Anwendung der Art. 21 und 23 der Haager Konvention, Nr. XIII von 1907, auf den „Appam"-Fall.

(**E. W. 3,** S. 332—333.)

British Embassy, Washington, February 4, 1916.

The British Embassy has the honour to refer to the rule of international law now generally recognised and embodied in Art. 21 and 23 of The Hague Convention XIII of 1907 and to request that the principles in question should be applied to the „Appam".

These principles have been accepted by both the British and the United States Governments. The Queen's Proclamation of 1861 interdicted the armed ships of belligerents from carrying prizes made by them into British ports, harbours, roadsteads, or waters, a measure of which the Secretary of State of the United States expressed his approval.

In the report of the American delegates to The Hague Conference it is stated that while Art. 21 and 22 seemed unobjectionable, Art. 23 (allowing the sequestration of prizes) „was objectionable for the reason that it involves

a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an ancient abuse and should not be approved. In this connection it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes."

This declaration shows that the Prussian treaty of 1799 (by which in any case Great Britain, not being a party, can not be affected) was regarded as obsolete and inconsistent with modern doctrines, and the fact that the United States Government adhered to the convention while reserving Art. 23 shows that in so far as the provisions of the treaty of 1799 conflict with the convention they are regarded as overridden by the later instrument.

The rule embodied in Art. 21 of the 1907 Convention is of general application, and the fact that Great Britain has not ratified the convention does not affect the obligation of the United States to treat ships and property of all nations in accordance with what the attitude of the United States towards the convention shows that they themselves regarded as the general rule.

Relying on the above considerations this Embassy is instructed to request that if the „Appam" is regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

The British Embassy begs to add that according to information received the captain of the German prize crew signalled on arrival that the ship was a part of the armed naval force of the German Empire. If this claim is advanced the United States Government will doubtless deal with the ship according to their recognised practice. If, however, she is regarded as a prize, this Embassy expresses its entire confidence that she will not be allowed to leave United States jurisdiction under German control in a condition which would enable her to undertake offensive action; and that she will not be allowed to increase or augment her force by adding to her armament or her crew or by transfer of trained men to the ship or by a change of personnel or in any other manner. The British Embassy begs to add that the claim that the ship was a war vessel shows that if allowed by the United States to leave as a prize under German control she would be used by the Germans as a man-of-war; and it is needless to remind the State Department of the doctrine accepted by both our Governments, under which the British Government would be compelled to hold the United States Government responsible for any injury which she may inflict.

Cecil Spring Rice.

Nr. 1978. Deutsches Memorandum vom 8. Februar 1916 über die Anwendung des Art. 19 des preußisch-amerikanischen Vertrages von 1799 auf den „Appam"-Fall.

(**E. W. 3,** S. 333.)

„Appam" is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Art. 19 of Prusso-American treaty of 1799. Art. 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Art. 28. The above-mentioned Art. 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.

Nr. 1979. Deutsche Denkschrift vom 8. Februar 1916 über die Behandlung bewaffneter Kauffahrteischiffe.

(A. A. U. Nr. 17.)

I.

1. Schon vor Ausbruch des gegenwärtigen Krieges hatte die britische Regierung englischen Reedereien Gelegenheit gegeben, ihre Kauffahrteischiffe mit Geschützen zu armieren. Am 26. März 1913 gab der damalige erste Lord der Admiralität, *Winston Churchill*, im britischen Parlament die Erklärung ab (Anlage 1*), daß die Admiralität die Reedereien aufgefordert habe, zum Schutze gegen die in gewissen Fällen von schnellen Hilfskreuzern anderer Mächte drohenden Gefahren eine Anzahl erstklassiger Liniendampfer zu bewaffnen, die dadurch aber nicht etwa selbst den Charakter von Hilfskreuzern annehmen sollten. Die Regierung wollte den Reedereien dieser Schiffe die notwendigen Geschütze, die genügende Munition und geeignetes Personal zur Schulung von Bedienungsmannschaften zur Verfügung stellen.

2. Die englischen Reedereien sind der Aufforderung der Admiralität bereitwillig nachgekommen. So konnte der Präsident der *Royal Mail Steam Packet Company* Sir *Owen Philipps* den Aktionären seiner Gesellschaft bereits im Mai 1913 mitteilen, daß die größeren Dampfer der Gesellschaft mit Geschützen ausgerüstet seien; ferner veröffentlichte im Januar 1914 die britische Admiralität eine Liste, wonach 29 Dampfer verschiedener englischer Linien Heckgeschütze führten.

3. In der Tat stellten bald nach Ausbruch des Krieges deutsche Kreuzer fest, daß englische Liniendampfer bewaffnet waren. Beispielsweise trug der Dampfer „La Correntina“ der Houlder-Linie in Liverpool, der am 7. Oktober 1914 von dem deutschen Hilfskreuzer „Kronprinz Wilhelm“ aufgebracht wurde, zwei 4,7 zöllige Heckgeschütze. Auch wurde am 1. Februar 1915 ein deutsches Unterseeboot im Kanal durch eine englische Jacht beschossen.

II.

1. Was den völkerrechtlichen Charakter bewaffneter Kauffahrteischiffe betrifft, so hat die britische Regierung für die eigenen Kauffahrteischiffe den Standpunkt eingenommen, daß solche Schiffe solange den Charakter von friedlichen Handelsschiffen behalten, als sie die Waffen nur zu Verteidigungszwecken führen. Demgemäß hat der britische Botschafter in Washington der amerikanischen Regierung in einem Schreiben vom 25. August 1914 (Anlage 2) die weitestgehenden Versicherungen abgegeben, daß britische Kauffahrteischiffe niemals zu Angriffszwecken, sondern nur zur Verteidigung bewaffnet werden, daß sie infolgedessen niemals feuern, es sei denn, daß zuerst auf sie gefeuert wird. Für bewaffnete Schiffe anderer Flaggen hat dagegen die britische Regierung den Grundsatz aufgestellt, daß sie als Kriegsschiffe zu behandeln seien; in den *Prize Court Rules*, die durch die *Order in Council* vom 5. August 1914 erlassen worden sind, ist unter Nr. 1 der Order I ausdrücklich bestimmt: *„ship of war shall include armed ship“*.

2. Die deutsche Regierung hat keinen Zweifel, daß ein Kauffahrteischiff durch die Armierung mit Geschützen kriegsmäßigen Charakter erhält, und zwar ohne Unterschied, ob die Geschütze nur der Verteidigung oder auch dem Angriff dienen sollen. Sie hält jede kriegerische Betätigung eines feindlichen Kauffahrteischiffs für völkerrechtswidrig, wenn sie auch der entgegenstehenden Auffassung dadurch Rechnung trägt, daß sie die Besatzung eines

*) Die Anlagen sind abgedruckt a. a. O. S. 60—89. — Herausgeber.

solchen Schiffes nicht als Piraten, sondern als Kriegführende behandelt. Im einzelnen ergibt sich ihr Standpunkt aus der im Oktober 1914 der amerikanischen Regierung und inhaltlich auch anderen neutralen Mächten mitgeteilten Aufzeichnung über die Behandlung bewaffneter Kauffahrteischiffe in neutralen Häfen (Anlage 3).

3. Die neutralen Mächte haben sich zum Teil der britischen Auffassung angeschlossen und demgemäß bewaffneten Kauffahrteischiffen der kriegführenden Mächte den Aufenthalt in ihren Häfen und Reeden ohne die Beschränkungen gestattet, die sie Kriegsschiffen durch ihre Neutralitätsbestimmungen auferlegt hatten. Zum Teil haben sie aber auch den entgegengesetzten Standpunkt eingenommen und bewaffnete Kauffahrteischiffe Kriegführender den für Kriegsschiffe geltenden Neutralitätsregeln unterworfen.

III.

1. Im Laufe des Krieges wurde die Bewaffnung englischer Kauffahrteischiffe immer allgemeiner durchgeführt. Aus den Berichten der deutschen Seestreitkräfte wurden zahlreiche Fälle bekannt, in denen englische Kauffahrteischiffe nicht nur den deutschen Kriegsschiffen bewaffneten Widerstand entgegensetzten, sondern ihrerseits ohne weiteres zum Angriff auf sie übergingen, wobei sie sich häufig auch noch falscher Flaggen bedienten. Eine Zusammenstellung solcher Fälle findet sich in der Anlage 4, die nach Lage der Sache nur einen Teil der wirklich erfolgten Angriffe umfassen kann. Auch geht aus der Zusammenstellung hervor, daß sich das geschilderte Verhalten nicht auf englische Kauffahrteischiffe beschränkt, vielmehr von den Kauffahrteischiffen der Verbündeten Englands nachgeahmt wird.

2. Die Aufklärung für das geschilderte Vorgehen der bewaffneten englischen Kauffahrteischiffe enthalten die in den Anlagen 5 bis 12 photographisch wiedergegebenen geheimen Anweisungen der britischen Admiralität, die von deutschen Seestreitkräften auf weggenommenen Schiffen gefunden worden sind. Diese Anweisungen regeln bis ins einzelne den artilleristischen Angriff englischer Kauffahrteischiffe auf deutsche Unterseeboote. Sie enthalten genaue Vorschriften über die Aufnahme, Behandlung, Tätigkeit und Kontrolle der an Bord der Kauffahrteischiffe übernommenen britischen Geschützmannschaften, die z. B. in neutralen Häfen keine Uniform tragen sollen, also offenbar der britischen Kriegsmarine angehören. Vor allem aber ergibt sich daraus, daß diese bewaffneten Schiffe nicht etwa irgendeine seekriegsrechtliche Maßnahme der deutschen Unterseeboote abwarten, sondern diese ohne weiteres angreifen sollen. In dieser Hinsicht sind folgende Vorschriften besonders lehrreich:

a) Die „Regeln für die Benutzung und die sorgfältige Instandhaltung der Bewaffnung von Kauffahrteischiffen, die zu Verteidigungszwecken bewaffnet sind" (Anlage 5, 6), bestimmen in dem Abschnitt „Gefecht" unter Nr. 4: „es ist nicht ratsam, das Feuer auf eine größere Entfernung als 800 Yards zu eröffnen, es sei denn, daß der Feind bereits das Feuer vorher eröffnet hat". Grundsätzlich hat hiernach das Kauffahrteischiff die Aufgabe, das Feuer zu eröffnen, ohne Rücksicht auf die Haltung des Unterseeboots.

b) Die „Anweisungen, betreffend Unterseeboote, herausgegeben für Schiffe, die zu Verteidigungszwecken bewaffnet sind" (Anlage 9, 10), schreiben unter Nr. 3 vor: „Wenn bei Tage ein Unterseeboot ein Schiff offensichtlich verfolgt, und wenn dem Kapitän augenscheinlich ist, daß es feindliche Absichten hat, dann soll das verfolgte Schiff zu seiner Verteidigung das Feuer eröffnen, auch wenn das Unterseeboot noch keine entschieden feindliche Handlung, wie z. B. Abfeuern eines Geschützes oder eines Torpedos, begangen hat". Auch hiernach genügt also das

bloße Erscheinen eines Unterseeboots im Kielwasser des Kauffahrteischiffs als Anlaß für einen bewaffneten Angriff.

In allen diesen Befehlen, die sich nicht etwa nur auf die Seekriegszone um England beziehen, sondern in ihrem Geltungsbereich unbeschränkt sind (vgl. für das Mittelmeer Anlage 12), wird auf die Geheimhaltung der größte Nachdruck gelegt, und zwar offenbar deshalb, damit das völkerrechtswidrige und mit den britischen Zusicherungen (Anlage 2) in vollem Widerspruch stehende Vorgehen der Kauffahrteischiffe dem Feinde wie den Neutralen verborgen bleibe.

3. Hiernach ist klargestellt, daß die bewaffneten englischen Kauffahrteischiffe den amtlichen Auftrag haben, die deutschen Unterseeboote überall, wo sie in ihre Nähe gelangen, heimtückisch zu überfallen, also rücksichtslos gegen sie Krieg zu führen. Da die Seekriegsregeln Englands von seinen Verbündeten ohne weiteres übernommen werden, muß der Nachweis auch für die bewaffneten Kauffahrteischiffe der anderen feindlichen Staaten als erbracht gelten.

IV.

1. Unter den vorstehend dargelegten Umständen haben feindliche Kauffahrteischiffe, die mit Geschützen bewaffnet sind, kein Recht mehr darauf, als friedliche Handelsschiffe angesehen zu werden. Die deutschen Seestreitkräfte werden daher nach einer kurzen, den Interessen der Neutralen Rechnung tragenden Frist den Befehl erhalten, solche Schiffe als Kriegführende zu behandeln.

2. Die deutsche Regierung gibt den neutralen Mächten von dieser Sachlage Kenntnis, damit sie ihre Angehörigen warnen können, weiterhin ihre Person oder ihr Vermögen bewaffneten Kauffahrteischiffen der mit dem Deutschen Reiche im Kriege befindlichen Mächte anzuvertrauen.

Berlin, den 8. Februar 1916.

Nr. 1980. Englisches Memorandum vom 12. Februar 1916 über die Notwendigkeit der Verhinderung eines Personalwechsels oder einer Vermehrung der Bewaffnung des Dampfers „Appam".

(E. W. 3, S. 333.)

British Embassy, Washington, February 12, 1916.

It has been ascertained from Norfolk that no restrictions are placed upon persons going on board the „Appam" at the invitation of her commander, though the latter reports daily to the collector of customs that all visitors have returned to the shore.

The British Embassy cannot but view this arrangement with some anxiety and, referring to their memorandum of February 3rd, beg to reiterate the expression of their confidence that adequate precautions are being taken with a view to preventing any increase in the armament or crew of the ship or any change in her personnel which would augment her force.

The present notification is not of course to be considered as a request for action or as a complaint, but is made in fulfilment of the duty incumbent on this Embassy to inform the State Department at once of any information which may reach them relative to matters appertaining to pending questions between the two Governments.

Nr. 1981. Englisches Memorandum vom 15. Februar 1916. Handlungen der Eigentümer des Dampfers „Appam" präjudizieren nicht die Ansprüche der englischen Regierung. (**E. W. 3,** S. 334.)

British Embassy, Washington, February 15, 1916.

The British Embassy has the honour to inform the State Department that the British Government reserves all rights under accepted principles and practice of international law with regard to the „Appam", and that any action taken in the matter by the owners in maintenance of their interests is not in any way to be considered as prejudicing any claim advanced or to be advanced by the British Government.

Nr. 1982. Der deutsche Botschafter an Lansing, 22. Februar 1916. Einspruch gegen die Klageschrift in Sachen des Dampfers „Appam".

(**E. W. 3,** S. 334—335.)

German Embassy, Washington, February 22, 1916.

My dear Mr. Secretary: Lieut. *Hans Berg,* of the German Imperial Navy and commander of H. M. S. „Appam", now lying at anchor near Newport News, Va., has informed me that a libel was filed against said vessel in the United States District Court for the Eastern District of Virginia, at Norfolk, on the 16th day of February, 1916, by the British and African Steam Navigation Co., Limited, and that, under the authority of said court, he has been cited by the marshal of the eastern district of Virginia to appear before said court on Friday, the 3d day of March, 1916, to answer the said libel.

As the „Appam" was captured at sea by a German man-of-war and brought to the Virginian port as a prize ship according to the treaty existing between our countries, you may well appreciate my surprise at the action which has been taken.

Art. XIX of the treaty of 1799 between Prussia and the United States, renewed in part by Art. XII of the treaty of 1828, provides that „the vessels and effects taken from" the enemies of the contracting parties may be carried freely wheresoever they please, and that such prizes shall not be „put under legal process when they come to and enter the ports of the other party***".

In view of the terms of the treaty, I am at a loss to understand why such action has been taken by a court of your country. It may be argued that it has been because Art. 21 of The Hague „Convention concerning the rights and duties of neutral powers in naval war" is applicable. This article provides: „A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions".

„It must leave as soon as the circumstances which justified its entry are at an end. If it does not the neutral power must order it to leave at once; should it fail to obey the neutral power must employ the means at its disposal to release it with its officers and crew and to intern the crew."

But as Great Britain has not ratified the convention the article is not binding, for the reason that Art. 28 provides: „The provisions of the present convention do not apply except to the contracting powers, and then only if all the belligerents are parties to the convention".

Besides, the „Appam" flies the naval flag of and belongs to the German Government, and therefore the possession of the captors in a neutral port is

the possession their sovereign. The sovereign whose officers have captured the vessel as a prize of war remains in possession of that vessel and has full power over her. The neutral sovereign or its court can take no cognizance of the question of prize or no prize and can not wrest from the possession of the captor a prize of war brought into its ports.

The position which I take is fully supported by an opinion of the Attorney General of the United States (7 Op., 122), the syllabus of which recites that a „foreign ship of war or any prize of hers in command of a public officer possesses in the ports of the United States the right of exterritoriality and is not subject to the local jurisdiction".

I would therefore most respectfully protest against the action of the United States District Court, and request that you may ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

I am, etc. *J. Bernstorff.*

Nr. 1983. Wilsons Brief vom 24. Februar 1916 an Senator Stone, Chairman of the Committee on Foreign Relations, über die Frage der bewaffneten Handelsschiffe. (The New York Times vom 25. Februar 1916.)

The White House, Washington, February 24, 1916.

My dear Senator — I very warmly appreciate your kind and frank letter of today and feel that it calls for an equally frank reply.

You are right in assuming that I shall do everything in my power to keep the United States out of war. I think the country will feel no uneasiness about my course in that respect. Through many anxious months I have striven for that object, amidst difficulties more manifold than can have been apparent upon the surface, and so far I have succeeded. I do not doubt that I shall continue to succeed. The course which the Central European Powers have announced their intention of following in the future with regard to undersea warfare seems for the moment to threaten insuperable obstacles, but its apparent meaning is so manifestly inconsistent with explicit assurances recently given us by those Powers with regard to their treatment of merchant vessels on the high seas that I must believe that explanations will presently ensue which will put a different aspect upon it. We have had no reason to question their good faith or their fidelity to their promises in the past, and I for one feel confident that we shall have none in the future.

But in any event our duty is clear. No nation, no group of nations, has the right while war is in progress to alter or disregard the principles which all nations have agreed upon in mitigation of the horrors and sufferings of war; and if the clear rights of American citizens should ever unhappily be abridged or denied by any such action we should, it seems to me, have in honor no choice as to what our own course should be.

For my own part, I cannot consent to any abridgment of the rights of American citizens in any respect. The honor and self-respect of the nation are involved. We covet peace, and shall preserve it at any cost but the loss of honor. To forbid our people to exercise their rights for fear we might be called upon to vindicate them would be a deep humiliation indeed. It would be an implicit, all but an explicit, acquiescence in the violation of the rights of mankind everywhere, and of whatever nation or allegiance. It

would be a deliberate abdication of our hitherto proud position as spokesmen, even amidst the turmoil of war, for the law and the right. It would make everything this Government has attempted, and everything that it has achieved during this terrible struggle of nations, meaningless and futile.

It is important to reflect that if in this instance we allowed expediency to take the place of principle the door would inevitably be opened to still further concessions. Once accept a single abatement of right, and many other humiliations would certainly follow, and the whole fine fabric of international law might crumble under our hands piece by piece. What we are contending for in this matter is of the very essence of the things that have made America a sovereign nation. She cannot yield them without conceding her own impotency as a nation, and making virtual surrender of her independent position among the nations of the world.

I am speaking, my dear Senator, in deep solemnity, without heat, with a clear consciousness of the high responsibilities of my office, and as your sincere and devoted friend. If we should unhappily differ, we shall differ as friends; but where issues so momentous as these are involved we must, just because we are friends, speak our minds without reservation.

Faithfully yours,

To Hon. *William J. Stone,* *Woodrow Wilson.*
United States Senate.

Nr. 1984. Lansing an den deutschen Botschafter, 2. März 1916. Ablehnung der Anwendung des Art. 19 des Vertrages von 1799 auf den „Appam"-Fall.

(**E. W. 3,** S. 335—337.)

Department of State, Washington, March 2, 1916.

Excellency: I have the honor to acknowledge the receipt of Your Excellency's note of the 2d of February, informing me that the British steamer „Appam", captured by the German naval forces, had arrived at Norfolk under the command of Lieut. *Berg,* of the Imperial German Navy, who intends, in accordance, as he believes, with Art. XIX of the Prussian-American treaty of 1799, to remain in American waters until further notice, and that the „Appam" has not been converted into an auxiliary cruiser, is not armed, and has taken no prizes under Lieut. *Berg's* command. In conclusion Your Excellency requests internment in the United States during the remainder of the war of a military party belonging, Your Excellency states, to the enemy of Germany and also the internment of the crew of the „Appam", inasmuch as they offered resistance to capture by His Majesty's forces.

I have the honor also to acknowledge the receipt of Your Excellency's note of February 22, calling my attention to a libel which has been filed against the „Appam" by the United States District Court on February 16 by the British and African Steam Navigation Co., Limited, and to the fact that Lieut. *Berg* has been cited to appear before the court on March 3 next to answer this libel. Your Excellency points out that in view of the terms of Art. XIX of the treaty of 1799 and of the inoperation of The Hague Convention relating to neutral rights and duties in naval warfare, you are at a loss to understand why such action has been taken in this country. Your Excellency, moreover, asserts in effect that as the „Appam" flies the naval flag of and belongs to the German Government, and as the possession of the captors is the possession of their sovereign, „the neutral sovereign or its court can take no cognizance of the question of prize or no prize and can

not wrest from the possession of the captor a prize of war brought into its ports". Your Excellency, in conclusion, protests against the action of the court and requests that the Attorney General instruct the proper United States District Attorney to take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

Art. XIX of the treaty of 1799, to which Your Excellency refers, reads as follows:

„The vessels of war, public and private, of both parties, shall carry (conduire) freely, wheresoever they please, the vessels and effects taken (pris) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (prises) be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried (conduites) out again at any time by their captors (le vaisseau preneur) to the places expressed in their commissions, which the commanding officer of such vessel (le dit vaisseau) shall be obliged to show. But conformably to the treaties existing between the United States and Great Britain, no vessel (vaisseau) that shall have made a prize (prise) upon British subjects shall have a right to shelter in the ports of the United States, but if (il est) forced therein by tempests, or any other danger or accident of the sea, they (il sera) shall be obliged to depart as soon as possible."

This translation is taken from the published treaties of the United States, and while not conforming strictly to the original French text (copy of which is inclosed), is sufficiently accurate for the purposes of this note. At the outset it may be pointed out that as the object of this provision was to mollify the existing practice of nations as to asylum for prizes brought into neutral ports by men-of-war, it is subject to a strict interpretation when its privileges are invoked in a given case in modification of the established rule. By a reasonable interpretation of Art. XIX, however, it seems clear that it is applicable only to prizes which are brought into American ports by vessels of war. The „Appam", however, as Your Excellency is aware, was not accompanied by a ship of war, but came into the port of Norfolk alone in charge of a prize master and crew. Moreover, the treaty article allows to capturing vessels the privileges of carrying out their prizes again „to the places expressed in their commissions". The commissions referred to are manifestly those of the captor vessels which accompany prizes into port and not those of the officers of the prizes arriving in port without convoy, and it is clear that the port of refuge was not to be made a port of ultimate destination or indefinite asylum. In the case of the „Appam" the commission of Lieut. *Berg*, a copy of which was given to the collector of customs at Norfolk, not only is a commission of a prize master, but directs him to bring the „Appam" to the nearest American port and „there to lay her up". In the opinion of the Government of the United States, therefore, the case of the „Appam" does not fall within the evident meaning of the treaty provision which contemplates temporary asylum for vessels of war accompanying prizes while en route to the places named in the commander's commission, but not the deposit of the spoils of war in an American port. In this interpretation of the treaty, which I believe is the only one warranted by the terms of the provision and by the British treaties referred to in Art. XIX, and by other contemporaneous treaties, the Government of the United States considers itself free from any obligation to accord the „Appam" the privileges stipulated in Art. XIX of the treaty of 1799.

Under this construction of the treaty the „Appam" can enjoy only those privileges usually granted by maritime nations, including Germany, to

prizes of war, namely, to enter neutral ports only in case of stress of weather, want of fuel and provisions, or necessity of repairs, but to leave as soon as the cause of their entry has been removed.

As to the grounds upon which the application for the libel of the „Appam" by the United States court was made, this Department has no direct information; but it is understood that the libelant contends that the „Appam" is not, assuming that it is a prize of the German Government, the property of that Government, but that, on the contrary, the title to the vessel is now properly in the British owners. Whether in these circumstances the United States court has properly or improperly assumed jurisdiction of the case and taken custody of the ship is a legal question which, according to American practice, must now be decided by the municipal courts of this country. With the purpose, however, of having Your Excellency's views as to this matter brought to the attention of the court, I have transmitted your note of February 22 to the Attorney General, with a request that he instruct the United States District Attorney to appear in the case as amicus curiæ and present to the court a copy of Your Excellency's note.

As to the internment of the military party which Your Excellency states was on board the „Appam", as well as the officers and crew who offered resistance to capture by His Majesty's ships, I have the honor to inform you that the Government has, after due consideration, concluded that they should be released from detention on board the „Appam", together with their personal effects.

Accept, etc. *Robert Lansing.*

Nr. 1985. Deutsche Denkschrift vom 8. März 1916 an Amerika. Der deutsche Botschafter in Washington an den Staatssekretär der Vereinigten Staaten von Amerika.

(**A. A. U.** Nr. 18.)

Washington, den 8. März 1916.

Denkschrift.

Die Kaiserliche Regierung legt Wert darauf, die bisherige Entwicklung noch einmal mit aller der Offenheit zu präzisieren, die den freundschaftlichen Beziehungen der beiden großen Völker und dem ehrlichen Wunsch der Kaiserlichen Regierung, diese vor allen Trübungen zu bewahren, entspricht.

Bei Beginn des Krieges hat die deutsche Regierung auf Vorschlag der Vereinigten Staaten von Amerika sich sofort bereit erklärt, die Londoner Seekriegsrechtserklärung zu ratifizieren. Die deutsche Prisenordnung wurde schon vorher auf Grund der Bestimmungen der Londoner Seekriegsrechtserklärung ohne jede Einschränkung erlassen. Dadurch wurde anerkannt, daß die geltenden Bestimmungen des Völkerrechts, die dem legalen Handel der Neutralen — auch mit den Kriegführenden — „Freiheit des Meeres" sicherten, deutscherseits in vollem Umfange berücksichtigt werden sollten. England hat es im Gegensatz hierzu abgelehnt, die Londoner Seekriegsrechtserklärung zu ratifizieren, und begann nach Ausbruch des Krieges den legalen Handel der neutralen Staaten zu beschränken, um dadurch Deutschland zu treffen. Den systematischen Verschärfungen der Konterbandebestimmungen vom 5. August, 20. August, 21. September und 29. Oktober folgte am 3. November 1914 der Erlaß der britischen Admiralität, daß die ganze Nordsee als ein Kriegsgebiet anzusehen sei, in welchem die Handelsschiffahrt jeder Art den schwersten Gefahren durch Minen und Kriegsschiffe ausgesetzt sei. Der

Protest der neutralen Staaten hatte keinen Erfolg. Schon von diesem Zeitpunkt an gab es kaum noch Freiheit des neutralen Handels mit Deutschland. Im Februar 1915 sah Deutschland sich gezwungen, Gegenmaßnahmen zu treffen, die das völkerrechtswidrige Verfahren der Gegner bekämpfen sollten. Es wählte für seine Gegenmaßnahmen neue Kriegsmittel, deren Verwendung im Völkerrecht überhaupt noch nicht geregelt war, brach damit kein geltendes Recht, sondern trug nur der Eigenart der neuen Waffe — des U-Boots — Rechnung. Der Gebrauch der neuen Waffe mußte die Bewegungsfreiheit der Neutralen einschränken und bildete eine Gefahr, der durch besondere Warnung begegnet werden sollte, entsprechend der vorausgegangenen englischen Warnung vor den Gefahren des Kriegsgebiets der Nordsee.

Die Regierung der Vereinigten Staaten von Amerika trat, da beide kriegführenden Parteien, in der deutschen Note vom 17. Februar 1915 und in der englischen Note vom 18. und 20. Februar 1915, den Anspruch erhoben, daß ihr Vorgehen nur Vergeltung der Rechtsbrüche der Gegner sei, an beide kriegführenden Parteien heran, um nochmals zu versuchen, das vor dem Kriege anerkannte Völkerrecht wieder zur Geltung zu bringen. Sie forderte einerseits Deutschland auf, den Gebrauch seiner neuen Waffe den Bestimmungen für die alten Seekriegsmittel anzupassen, anderseits England, Lebensmittel für die nichtkämpfende Bevölkerung Deutschlands zur Verteilung unter amerikanischer Kontrolle passieren zu lassen.

Deutschland erklärte am 1. März 1915 seine Bereitwilligkeit, während England am 15. März eine Verständigung auf Grund der amerikanischen Vorschläge ablehnte. England beseitigte sogar durch seine Order vom 11. März 1915 den letzten Rest der völkerrechtsmäßigen Freiheit des neutralen Handels mit Deutschland und dessen neutralen Nachbarländern; der Zweck war, Deutschland durch Aushungerung zu bezwingen. Trotzdem entsprach Deutschland im weiteren Verlauf des Krieges, nachdem bei verschiedenen Gelegenheiten gegen seinen Wunsch und Willen neutrale Bürger ums Leben gekommen waren, in der praktischen Verwendung seiner U-Boots-Waffe den Wünschen der Regierung der Vereinigten Staaten in so entgegenkommender Weise, daß die Rechte der Neutralen auf legalen Handel tatsächlich deutscherseits überall unbeschränkt waren.

Nunmehr machte England dem U-Boot die Ausübung des den Völkerrechtsbestimmungen entsprechenden Handelskriegs dadurch unmöglich, daß es nahezu sämtliche Handelsschiffe bewaffnete und angriffsweisen Gebrauch der Geschütze anordnete. Die Photographien der englischen Befehle sind den neutralen Regierungen mit der Denkschrift vom 8. Februar 1916 zugestellt worden. Die Befehle widersprechen direkt den Erklärungen des englischen Botschafters in Washington vom 25. August 1914. Die Kaiserlich deutsche Regierung hat gehofft, daß dies Tatsachenmaterial die neutralen Regierungen auf Grund der von der Regierung der Vereinigten Staaten am 23. Januar 1916 gemachten Entwaffnungsvorschläge instand setzen würde, die Entwaffnung der Handelsschiffe durchzusetzen. Tatsächlich ist aber die Bewaffnung mit Geschützen von unseren Gegnern mit großer Energie weiter betrieben worden.

Der Grundsatz der amerikanischen Regierung, ihre Bürger von feindlichen Handelsschiffen nicht fernzuhalten, wurde von England und seinen Alliierten dazu benutzt, Handelsschiffe für den Angriff zu bewaffnen. So können nämlich Kauffahrteischiffe die U-Boote leicht zerstören und sich im Falle des Mißglückens ihres Angriffs durch die Anwesenheit amerikanischer Bürger an Bord gesichert glauben.

Der Befehl des Waffengebrauchs wurde ergänzt durch die Weisung an die Führer der Handelsschiffe, falsche Flaggen zu führen und die U-Boote zu rammen; die Nachrichten über ausgezahlte Prämien und Verleihung von

Ehrenzeichen an erfolgreiche Handelsschiffsführer zeigen die Wirkung dieser Befehle. Diesem englischen Vorgehen haben sich die Verbündeten angeschlossen:

Jetzt steht Deutschland vor der Tatsache,

a) daß eine völkerrechtswidrige Blockade (vgl. amerikanische Note an England vom 5. November 1915) seit einem Jahr den neutralen Handel den deutschen Häfen fernhält und Deutschlands Ausfuhr unmöglich macht,
b) daß völkerrechtswidrige Verschärfungen der Konterbandebestimmungen (siehe amerikanische Note an England vom 5. November 1915) seit eineinhalb Jahren den für Deutschland in Frage kommenden Seeverkehr der neutralen Nachbarländer verhindern,
c) daß völkerrechtswidrige Eingriffe in die Post (siehe amerikanisches Memorandum an England vom 10. Januar 1916) jede Verbindung Deutschlands mit dem Ausland zu verhindern streben,
d) daß systematisch gesteigerte Vergewaltigung der Neutralen nach dem Grundsatz „Macht über Recht" den Verkehr mit Deutschland über die Landgrenzen unterbindet, um die Hungerblockade der friedlichen Bevölkerung der Zentralmächte zu vervollständigen,
e) daß Deutsche, die von unseren Feinden auf See angetroffen werden, ohne Rücksicht darauf, ob Kämpfer oder Nichtkämpfer, der Freiheit beraubt werden,
f) daß unsere Gegner ihre Handelsschiffe für den Angriff bewaffnet und dadurch die Verwendung des U-Bootes nach den Grundsätzen der Londoner Deklaration unmöglich gemacht haben (siehe deutsche Denkschrift vom 8. Februar 1916).

Das englische Weißbuch vom 5. Januar 1916 über die Unterbindung des deutschen Handels rühmt, daß durch diese Maßnahme Deutschlands Ausfuhrhandel fast völlig unterbunden, seine Einfuhr vom Belieben Englands abhängig gemacht ist.

Die Kaiserliche Regierung darf hoffen, daß gemäß den freundschaftlichen Beziehungen, die in einer hundertjährigen Vergangenheit zwischen den beiden Völkern bestanden haben, der hier dargelegte Standpunkt trotz der durch das Vorgehen unserer Feinde erschwerten Verständigung zwischen beiden Völkern von dem Volk der Vereinigten Staaten gewürdigt werden wird.

Nr. 1986. Der deutsche Botschafter an Lansing, 14. März 1916. Ablehnung der vorgeschlagenen Auflegung des Dampfers „Appam".

(**E. W. 3,** S. 338—339.)

German Embassy, Washington, March 14, 1916.

My dear Mr. Secretary: Referring to previous correspondence in regard to H. M. S. „Appam", I am informed by our counsel that the State and Treasury Departments, mainly through the collector of customs, have been requesting the District Court of the United States for the Eastern District of Virginia to guard against two things: 1. An augmentation of the crew of the „Appam"; and 2. an attempt on her part to escape; and that such action would tend to disturb the peace of mind of the court.

While I can not understand on what theory the court can be asked to have anything to do with questions of augmentation, I can readily appreciate its desire to prevent any possible escape so long as court proceedings are pending.

In view of the action of the Departments, the court appears unwilling to permit the ship to continue in the stream with only two keepers, and has requested counsel to consent to her removal to a wharf or some safer anchorage.

Lieut. *Berg* objects to her being taken to a wharf on account of increased difficulty of controlling his crew, the danger of annoyance from curiosity seekers, and the possibility of injury from hostile sources.

Because of the divergent wishes in this respect, I believe that the court will be fully satisfied, and at the same time Lieut. *Berg* can carry out his wishes, if I now assure you, as I do, that, while reserving all the rights of the German Government in this case, both before the court and in our diplomatic negotiations, and with a further reservation that such assurance and agreement shall be without prejudice to the defense, no change shall be made in the status quo with respect to augmentation of the crew or equipment that might be considered a breach of neutrality, and that no attempt to run the vessel away will be made so long as said ship remains under the custody of said court.

I would therefore most respectfully request that you may communicate my assurance to the Treasury Department, and that both Departments may communicate, through the proper officers, with the court and inform it that, in view of my assurance, they have no further requests to make along this line at the present time, and that for the present it would not appear to be necessary that the ship be removed to a wharf.

In my note of February 22 I requested you to ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the dismissal of the libel. At a hearing held before said court at Richmond, Va., on March 7, said attorney appeared and presented a copy of my said note of February 22 to you, but did not ask for the dismissal of the libel. In view of this fact, and believing at this time that his presence in said court will not be further necessary for assisting in arriving at a solution of the case, I would most respectfully request that you may ask the Attorney General to instruct him not to appear further without securing express instructions so to do for such special reasons as your Government may have for so authorizing him.

I am, etc. *J. Bernstorff.*

Nr. 1987. Der deutsche Botschafter an Lansing, 16. März 1916. Vorschlag, die Auslegung des Vertrages von 1799 hinsichtlich seiner Anwendbarkeit auf den „Appam“-Fall dem Haager Schiedsgericht zu unterbreiten.

(**E. W. 3,** S. 339—340.)

German Embassy, Washington, March 16, 1916.

In reply to your kind note of the 2d instant, I have the honor, in compliance with instructions, to submit to you the inclosed memorandum of the Imperal Government on the subject that has been received by me.

Should the Government of the United States fail to concur in the Imperial Government's interpretation, the Imperial Government would propose that the construction of the treaty in question be referred to The Hague Court of Arbitration in the same way as the Imperial Government proposed in the „William P. Frye“ case in Secretary of State *von Jagow's* note of November 29 last, to Mr. *Gerard,* ambassador of the United States at Berlin,

provided that the status quo of the steamship „Appam“ will remain unchanged throughout the arbitration proceedings and that the steamer will be allowed to remain with her prize crew in an American port during that time.

Accept, etc. *J. Bernstorff.*

(Inclosure.)

Memorandum.

German Embassy.

The Imperial Government does not consider correct the interpretation of the Department of State of Art. 19 of the treaty of 1799 as given in the note.

The Department of State criticized that the „Appam“ was not brought into port by a warship, but arrived only with a prize crew on board. The treaty of 1799, referring to prizes accompanied by a warship, speaks, of course, of commercial warfare as it was usual in those times and which could be carried on by both parties only by privateers. This made it necessary that the prize was brought into port by the capturing vessel. The development of modern cruiser warfare, where, as a rule, the warship sends her prize into port by a military prize crew, can not render the stipulations of Art. 19 of said treaty null and void. The prize masters and prize crew, who represent the authority of the belligerent State, now take the place which the capturing vessel held formerly. That such stipulations are not in contradiction to the general rules of international law, and that, therefore, the treaty is not subject to the especially strict interpretation given to it by the Department of State, is proved by Art. 23 of The Hague Convention regarding neutrality on sea, which was adopted by a great majority, although under reservation by the United States, Great Britain, and Japan.

The Department of State missed in the commission of Lieut. *Berg* an order to take the prize into a German port, as it is unwilling to admit the permanent internment of the German prize in an American port as a consequence of the treaty. As proved by the last but obsolete sentences of Art. 19 of the treaty of 1785 and Art. 19 of the treaty of 1799, the object of Art. 19 is to grant asylum or shelter to prizes of one contracting party in the ports of the other party. The asylum naturally continues only as long as the prize crew is on board and the danger of being captured by enemy naval forces exists. Both premises prevail in this case. Lieut. *Berg*, an officer of the Imperial Navy, was commissioned by the commander of a German warship to seek with his prize in an American port the asylum guaranteed by the treaty. The opinion of the Department of State that the commission must mention a German port of destination for the prize is unfounded, as Art. 19 only provides the freedom of the prize to leave for the places which are named in the commission, but does not make the right of asylum depend on such port being mentioned. Such an indication seems superfluous if the prize is conducted by a prize crew mustered from the Imperial Navy, for such crew has to bring the prize into a German port as soon as possible. At present the claim for asylum naturally still exists, considering the uneven distribution of the domination of the seas between the belligerents.

As long as the right af asylum lasts the jurisdiction of American courts over the prize is formally excluded by Art. 19; a German prize court alone is competent. The opinion of the Department of State that the American

courts must decide about the claims of the British shipping company is incompatible with the treaty stipulations.

It is therefore respectfully requested that the prize crew should be permitted to remain in the American port, and also that the legal steps before an American court should be suspended.

Nr. 1988. Memorandum des Staatsdepartement in Washington vom 25. März 1916 über die Stellung der Vereinigten Staaten von Amerika zur Frage der Behandlung bewaffneter Handelsschiffe in neutralen Häfen und auf hoher See. (United States Naval Institute Proceedings, vol. 42, May-June 1916. Nr. 163. S. 1007—1010.)

Department of State, Washington, March 25, 1916.

I.

The status of an armed merchant vessel of a belligerent is to be considered from two points of view: First, from that of a neutral when the vessel enters its port, and second, from that of an enemy when the vessel is on the high seas.

First. — An armed merchant vessel in neutral ports.

1. It is necessary for a neutral government to determine the status of an armed merchant vessel of belligerent nationality which enters its jurisdiction, in order that the government may protect itself from responsibility for the destruction of life and property by permitting its ports to be used as bases of hostile operations by belligerent warships.

2. If the vessel carries a commission or orders issued by a belligerent government and directing it under penalty to conduct aggressive operations, or if it is conclusively shown to have conducted such operations, it should be regarded and treated as a warship.

3. If sufficient evidence is wanting a neutral government, in order to safeguard itself from liability for failure to preserve its neutrality, may reasonably presume from these facts the status of an armed merchant vessel which frequents its waters. There is no settled rule of international law as to the sufficiency of evidence to establish such a presumption. As a result a neutral government must decide for itself the sufficiency of the evidence which it requires to determine the character of the vessel. For the guidance of its port officers and other officials a neutral government may therefore declare a standard of evidence, but such standard may be changed on account of the general conditions of naval warfare or modified on account of the circumstances of a particular case. These changes and modifications may be made at any time during the progress of the war, since the determination of the status of an armed merchant vessel in neutral waters may affect the liability of a neutral government.

Second. — An armed merchant vessel on the high seas.

1. It is necessary for a belligerent warship to determine the status of an armed merchant vessel of an enemy encountered on the high seas, since the rights of life and property of belligerents and neutrals on board the vessel may be impaired if its status is that of an enemy warship.

2. The determination of warlike character must rest in no case upon presumption but upon conclusive evidence, because the responsibility for the destruction of life and property depends on the actual facts of the case and cannot be avoided or lessened by a standard of evidence which a belligerent may announce as creating a presumption of hostile character. On the other hand, to safeguard himself from possible liability for unwarranted destruction of life and property the belligerent should, in the absence of conclusive evidence, act on the presumption that an armed merchantman is of peaceful character.

3. A presumption based solely on the presence of an armament on a merchant vessel of an enemy is not a sufficient reason for a belligerent to declare it to be a warship and proceed to attack it without regard to the rights of the persons on board. Conclusive evidence of a purpose to use the armament for aggression is essential. Consequently an armament which a neutral government, seeking to perform its neutral duties, may presume to be intended for aggression, might in fact on the high seas be used solely for protection. A neutral government has no opportunity to determine the purpose of an armamant on a merchant vessel unless there is evidence in the ship's papers or other proof as to its previous use, so that the government is justified in substituting an arbitrary rule of presumption in arriving at the status of the merchant vessel. On the other hand, a belligerent warship can on the high seas test by actual experience the purpose of an armament on a enemy merchant vessel, and so determine by direct evidence the status of the vessel.

Summary. — The status of an armed merchant vessel as a warship in neutral waters may be determined in the absence of documentary proof or conclusive evidence of previous aggressive conduct, by presumption derived from all the circumstances of the case.

The status of such vessel as a warship on the high seas must be determined only upon conclusive evidence of aggressive purpose, in the absence of which it is to be presumed that the vessel has a private and peaceable character, and it should be so treated by an enemy warship.

In brief, a neutral government may proceed upon the presumption that an armed merchant vessel of belligerent nationality is armed for aggression, while a belligerent should proceed on the presumption that the vessel is armed for protection. Both of these presumptions may be overcome be evidence — the first by secondary or collateral evidence, since the fact to be established is negative in character; the second by primary and direct evidence, since the fact to be established is positive in character.

II.

The character of the evidence upon which the status of an armed merchant vessel of belligerent nationality is to be determined when visiting neutral waters and when traversing the high seas having been stated, it is important to consider the rights and duties of neutrals and belligerents as affected by the status of armed merchant vessels in neutral ports and on the high seas.

First. — The relations of belligerents and neutrals as affected by the status of armed merchant vessels in neutral ports.

1. It appears to be the established rule of international law that warships of a belligerent may enter neutral ports and accept limited hospitality

there upon condition that they leave, as a rule, within 24 hours after their arrival.

2. Belligerent warships are also entitled to take on fuel once in three months in ports of a neutral country.

3. As a mode of enforcing these rules, a neutral has the right to cause belligerent warships failing to comply with them, together with their officers and crews, to be interned during the remainder of the war.

4. Merchantmen of belligerent nationality, armed only for purposes of protection against the enemy, are entitled to enter and leave neutral ports without hindrance in the course of legitimate trade.

5. Armed merchantmen of belligerent nationality under a commission or orders of their government to use, under penalty, their armament for aggressive purposes, or merchantmen which, without such commission or orders, have used their armaments for aggressive purposes, are not entitled to the same hospitality in neutral ports as peaceable armed merchantmen.

Second. — The relations of belligerents and neutrals as affected by the status of armed merchant vessels on the high seas.

1. Innocent neutral property on the high seas cannot legally be confiscated, but is subject to inspection by a belligerent. Resistance to inspection removes this immunity and subjects the property to condemnation by a prize court, which is charged with the preservation of the legal rights of the owners of neutral property.

2. Neutral property engaged in contraband trade, breach of blockade, or unneutral service obtains the character of enemy property and is subject to seizure by a belligerent and condemnation by a prize court.

3. When hostile and innocent property is mixed, as in the case of a neutral ship carrying a cargo which is entirely or partly contraband, this fact can only be determined by inspection. Such innocent property may be of uncertain character, as it has been frequently held that it is more or less contaminated by association with hostile property. For example, under the Declaration of London (which, so far as the provisions covering this subject are concerned, has been adopted by all the belligerents), the presence of a cargo which in bulk or value consists of 50 per cent contraband articles impresses the ship with enemy character and subjects it to seizure and condemnation by a prize court.

4. Enemy property, including ships and cargoes, is always subject to seizure and condemnation. Any enemy property taken by a belligerent on the high seas is a total loss to the owners. There is no redress in a prize court. The only means of avoiding loss is by flight or successful resistance. Enemy merchant ships have, therefore, the right to arm for the purpose of self-protection.

5. A belligerent warship is any vessel which under commission or orders of its government imposing penalties or entitling it to prize money, is armed for the purpose of seeking and capturing or destroying enemy property or hostile neutral property on the seas. The size of the vessel, strength of armament, and its defensive or offensive force are immaterial.

6. A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes. If the hostile character of the property is known, however, the belligerent

warship may seize the property without exercising the right of visit and search which is solely for the purpose of obtaining knowledge as to the character of the property. The attacking vessel must display its colors before exercising belligerent rights.

7. When a belligerent warship meets a merchantman on the high seas which is known to be enemy owned and attempts to capture the vessel, the latter may exercise its right of self-protection either by flight or by resistance. The right to capture and the right to prevent capture are recognized as equally justifiable.

8. The exercise of the right of capture is limited, nevertheless, by certain accepted rules of conduct based on the principles of humanity and regard for innocent property, even if there is definite knowledge that some of the property, cargo, as well as the vessel, is of enemy character. As a character of these limitations, it has become the established practice for warships to give merchant vessels an opportunity to surrender or submit to visit and search before attempting to seize them by force. The observance of this rule of naval warfare tends to prevent the loss of life of non-combatants and the destruction of innocent neutral property which would result from sudden attack.

9. If, however, before a summons to surrender is given, a merchantman of belligerent nationality, aware of the approach of an enemy warship, uses its armament to keep the enemy at a distance, or after it has been summoned to surrender it resists or flees, the warship may properly exercise force to compel surrender.

10. If the merchantman finally surrenders, the belligerent warship may release it or take it into custody. In the case of an enemy merchantman it may be sunk, but only if it is impossible to take it into port, and provided always that the persons on board are put in a place of safety. In the case of a neutral merchantman, the right to sink it in any circumstance is doubtful.

11. A merchantman entitled to exercise the right of self-protection may do so when certain of attack by an enemy warship, otherwise the exercise of the right would be so restricted as to render it ineffectual. There is a distinct difference, however, between the exercise of the right of self-protection and the act of cruising the seas in an armed vessel for the purpose of attacking enemy naval vessels.

12. In the event that merchant ships of belligerent nationality are armed and under commission or orders to attack in all circumstances certain classes of enemy naval vessels for the purpose of destroying them, and are entitled to receive prize money for such service from their government, or are liable to a penalty for failure to obey the orders given, such merchant ships lose their status as peaceable merchant ships and are to a limited extent incorporated in the naval forces of their government, even though it is not their sole occupation to conduct hostile operations.

13. A vessel engaded intermittently in commerce and under a commission or orders of its government imposing a penalty, in pursing and attacking enemy naval craft, possesses a status tainted with a hostile purpose which it cannot throw aside or assume at will. It should, therefore, be considered as an armed public vessel and receive the treatment of a warship by an enemy and by neutrals. Any person taking passage on such a vessel cannot expect immunity other than that accorded persons who are on board a warship. A private vessel, engaged in seeking enemy naval craft, without such a commission or orders from its government, stands in

a relation to the enemy similar to that of a civilian who fires upon the organized military forces of a belligerent, and is entitled to no more considerate treatment.

Nr. 1989. Der Botschafter Sharp an Lansing, 28. März 1916. Nach Information des französischen Auswärtigen Amts war der Dampfer „Sussex"*) unbewaffnet.

(**E. W. 3,** S. 248.)

American Embassy, Paris, March 28, 1916.

Mr. *Sharp* reports that he has been informed officially by the French Foreign Office that the steamship „Sussex" was not armed and further that channel passenger steamers have not been and are not armed. After having made a careful examination of the „Sussex" at Boulogne, Maj. *Logan* and Lieut. *Smith* have reported that they could see no indications on the vessel of any gun mountings.

Nr. 1990. Mr. de Margerie vom französischen Ministerium des Aeußern an Botschafter Sharp, 29. März 1916. Verneinung der Anfrage, ob der Dampfer „Sussex" bewaffnet war.

(**E. W. 3,** S. 250—251.)

(Translation.) Paris, March 29, 1916.

Mr. Ambassador: Your Excellency was good enough to ask me on the 28th of this month by direction of your Government whether the steamer „Sussex", of the French line crossing between Dieppe and Folkestone, was armed during the voyage accomplished on the 24th of March, in which she was damaged by an explosion. Your Excellency was good enough at the same time to ask me whether steamers carrying passengers between English and French ports on the channel are customarily armed.

I have the honor to inform Your Excellency that the „Sussex" carried no kind of armament, and that, in a specific manner, the passenger steamers making the channel service between France and England are not armed.

With the assurances, etc. *P. de Margerie.*

Nr. 1991. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.****) Nr. 19.)

Urgent. Berlin, March 29, 1916.

Your Excellency:

I have the honor to inform Your Excellency that my Government has received considerable evidence that the steamer „Sussex", plying between

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*) Eidliche Aussagen und Berichte zum „Sussex"-Fall finden sich **E. W. 3,** S. 249—301. Herausgeber.

) S. auch **E. W. 3, S. 237. Herausgeber.

Dieppe and Folkestone, which was loaded with passengers including several American citizens, was torpedoed and sunk by a torpedo from a submarine on March 24th.

I am directed by my Government to inquire of Your Excellency whether the „Sussex“ was sunk by a submarine belonging to Germany or her allies, and to request a prompt reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1992. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.***) Nr. 20.)

Urgent. Berlin, March 30, 1916.

Your Excellency:

I have the honor to inform Your Excellency that my Government has received information to the effect that the Dominion Line steamer „Englishman“ was torpedoed after leaving Avonmouth on March 21st for Portland, Maine. The vessel was a horse-ship and carried on board several American citizens, some of whom are not included in the list of survivors.

I am directed by my Government to inquire of the German Government whether the „Englishman“ was sunk by a submarine belonging to Germany or her allies, and to add that a prompt answer is expected by my Government.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1993. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.** Nr. 21.)

Urgent. Berlin, March 30, 1916.

Your Excellency:

With reference to my Note No. 8876 of to-day's date, I have the honor to inform Your Excellency that I am instructed by my Government to add that the Department of State at Washington is now in possession of an affidavit made by an American citizen stating that the „Englishman“ was sunk by the German Submarine U 19, which he saw.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

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*) S. auch **E. W. 3,** S. 237. Herausgeber.

Nr. 1994. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts.

(**A. A. U.***) Nr. 22.)

Urgent. Berlin, March 30, 1916.

Your Excellency:

I have the honor to inform Your Excellency that my Government has received information to the effect that the liner „Manchester Engineer“ was torpedoed without warning off Waterford on March 27th with American citizens on board.

I am directed by my Government to inquire of the German Government as to whether the „Manchester Engineer“ was sunk by a submarine belonging to Germany or her allies, and to add that a prompt answer is expected by my Government.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1995. Der englische Botschafter an Lansing, 31. März 1916. Der „Appam“-Fall eine Verletzung der amerikanischen Neutralität. (**E. W. 3,** S. 340—341.)

British Embassy, Washington, March 31, 1916.

My dear Mr. Secretary: On February 3rd, last, I had the honour, under instructions from my Government, to request that if the „Appam“ were regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

Since that date it has come to my knowledge that a proceeding has been brought in the Admiralty Court of the United States by the owners of the vessel for its restitution and that the court has taken jurisdiction of the suit. It appears that the vessel had been detained in an American port by the prize crew for more than two weeks before suit was instituted. I am informed that the vessel was in a seaworthy condition when brought into port and that the time which elapsed before the beginning of the suit was more than sufficient to supply any deficiencies of coal and provisions. The detention of the vessel for such a period of time was therefore a violation of the neutrality of the United States under the Law of Nations as expressed in Art. 21 and 22 of Convention 13 as formulated at The Hague in 1907 and as previously understood and applied among the nations.

I understand that the Admiralty Courts of the United States have jurisdiction to decree the restitution to the owners of a prize brought into an American port by a belligerent captor when there has been a violation of American neutrality on the part of the captor. It seems to me desirable and proper that such violation of American neutrality should be called to the court's attention, not only by the private owners of the captured vessel but also by the official representatives of the United States Government.

I have the honour to request that if the United States Government do not see their way clear to direct by executive order, as suggested in my note above referred to, the return of the vessel to her British owners, in-

*) S. auch **E. W. 3,** S. 237. Herausgeber.

structions may be given, should there be no objection, to the proper representatives of the Department of Justice of the United States to appear in their official capacity before the United States District Court for the Eastern District of Virginia, in which the suit for the recovery of the steamship „Appam" is pending, and to represent to that court on behalf of the Government of the United States that the detention of the steamship „Appam" under the circumstances above set forth constituted a violation of the neutrality of the United States and apply to the court to direct the return of the vessel to her owners upon due proof of their ownership and of the facts constituting the violation of neutrality above set forth.

I am, etc., *Cecil Spring Rice.*

Nr. 1996. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts. (Fall ‚Eagle Point'.)

(**A. A. U.***) Nr. 23.)

Urgent. Berlin, April 3, 1916.

Your Excellency:

I have the honor to inform Your Excellency that my Government is informed that the British steamer „Eagle Point" with American citizens on board, was torpedoed on March 28, 1916, after surrender while bound from St. Johns, New Brunswick, to Cherbourg, and that the persons on board were left in two small boats 130 miles south of Queenstown, in a heavy sea and with a stormy wind blowing.

I am directed to inquire of Your Excellency whether this vessel was torpedoed by a submarine belonging to Germany or her allies, and to add that a prompt reply is expected by my Government.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration. gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 1997. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts. (Fall ‚Berwind Vale'.)

(**A. A. U.***) Nr. 24.)

Urgent. Berlin, April 3, 1916.

Your Excellency:

I have the honor to inform Your Excellency that my Government is informed that the British steamer „Berwind Vale" while apparently returning to the United States with cargo and carrying four American citizens on board, was torpedoed without warning of Bantry, Ireland, on March 16th.

I am directed to bring this matter to Your Excellency's attention with a request for information as to whether this vessel was torpedoed by a submarine belonging to Germany or her allies, and to add that a prompt answer is expected by my Government.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration. gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

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*) S. auch **E. W. 3,** S. 238. Herausgeber.

Nr. 1998. Lansing an den englischen Botschafter, 4. April 1916. Der „Appam"-Fall keine Verletzung der amerikanischen Neutralität.

(**E. W. 3,** S. 341—342.)

Department of State, Washington, April 4, 1916.

My dear Mr. Ambassador: I have received your formal note of the 31st ultimo, in which you request that as the „Appam" had violated the neutrality of the United States by her staying in port up to the beginning of the suit now pending against her, such violation of American neutrality be called to the court's attention by the proper representatives of the Department of Justice on behalf of the Government of the United States, and that application be made to the court to direct the return of the vessel to the owners upon due proof of their ownership and of the facts constituting a violation of neutrality.

In reply, allow me to say that as the vessel was in American jurisdiction up until the time of the filing of the suit against her, pending consideration of the question as to whether she was entitled to the privileges claimed for her by the German Government by virtue of Art. 19 of the treaty of 1799, and as this Government reached a decision on that question only after the libel had been filed, I am unable to accept your suggestion that the presence of the „Appam" in American waters, in the circumstances, constituted a violation of the neutrality of the United States. Holding this view, I regret that I am unable to comply with your request to have official representations made to the court in the sense of your note under acknowledgment.

I am, etc. *Robert Lansing.*

Nr. 1999. Lansing an den deutschen Botschafter, 7. April 1916. Ablehnung, die Auslegung des Vertrages von 1799 hinsichtlich seiner Anwendbarkeit auf den „Appam"-Fall dem Haager Schiedsgericht zu unterbreiten.

(**E. W. 3,** S. 342—344.)

Department of State, Washington, April 7, 1916.

Excellency: I have the honor to acknowledge the receipt of your note of the 16th ultimo, inclosing a memorandum of the Imperial German Government on the subject of the „Appam", now at Norfolk. The memorandum of the Imperial Government contends, in brief, that Art. 19 of the treaty of 1799 „speaks, of course, of commercial warfare as it was usual in those times and which would be carried on by both parties only by privateers", and that the development of modern cruiser warfare, in which a prize master and crew representing the authority of a belligerent State now take the place which the convoying vessel formerly held, should govern the present interpretation of the treaty. The Government of the United States agrees with the German Government's statement that the treaty speaks of a mode of warfare in use at the time the treaty was negotiated. It is precisely for this reason that the Government of the United States does not believe that the treaty was intended to apply to circumstances of modern warfare which are essentially different from those in vogue at the close of the eighteenth century. The Government of the United States does not understand upon what ground the Imperial Government contends that a treaty granting concessions under specifically mentioned circumstances can be construed to apply

to a situation involving other and different circumstances. To grant limited asylum in a neutral port to a prize accompanied by the capturing vessel is not the granting of a right of „laying up“ in a neutral port a prize which arrives in the control of a prize master and crew.

Your Excellency's Government further contends that Art. 19, besides being applicable to modern conditions, is not contrary to the general rules of international law, and therefore not subject to a restricting interpretation, and in support of this cites as declaratory of the general rules of international law Art. 23 of Hague Convention XIII. As indicated by the Imperial Government, the United States did not in the case of this convention, and never has, assented to the sequestration of prizes in its ports. The ground of this position of the United States is that it does not, in the opinion of this Government, comport with the obligations of aneutral power to allow its ports to be used either as a place of indefinite refuge for belligerent prizes or as a place for their sequestration during the proceedings of prize courts. The contention of the Government of the United States in its note of March 2 in this case is consistent with this longestablished and well-known policy of the American Government, in the light of which the treaty of 1799 was negotiated and has been enforced and applied. Provided the vessel enters an American port accompanied by a German naval vessel, Art. 19 contemplates in the view of this Government merely temporary sojourn of the prize in an American port and not its sequestration there pending the decision of a prize court.

Holding the view that Art. 19 is not applicable to the case of the „Appam“, this Government does not consider it necessary to discuss the contention of the Imperial Government that under Art. 19 American courts are without jurisdiction to interfere with the prize, and for the same reason it can not accede to the request that the „legal steps before an American court should be suspended“.

In Your Excellency's note transmitting the memorandum of your Government it is proposed that should this Government fail to concur in the contentions of the Imperial Government the construction of the treaty in question be referred to the Hague Court of Arbitration in the same way as the Imperial Government has proposed to do in the „William P. Frye“ case, provided that the status quo of the „Appam“ remain unchanged throughout the arbitration proceedings and that the steamer be allowed to remain with her prize crew in an American port during that time. It is regretted that this proposal which appeals to the principle of arbitration, of which this Government is an earnest advocate, can not be accepted in this particular case by the Government of the United States. Its acceptance would manifestly defeat the very object of the United States in its reservation to Art. 23 of Convention XIII by allowing the prize to remain in an American port for an indefinite period while the arbitration proceedings were in progress, which might continue until after peace is restored. In this respect the case differs from that of the „William P. Frye“. Moreover, inasmuch as the „Appam“ has been libeled in the United States District Court by the alleged owners, this Government, under the American system of government, in which the judicial and executive branches are entirely separate and independent, could not vouch for a continuance of the status quo of the prize during the progress of the arbitration proposed by the Imperial Government. The United States Court, having taken jurisdiction of the vessel, that jurisdiction can only be dissolved by judicial proceedings leading to a decision of the court discharging the case a procedure which the executive can not summarily terminate.

In these circumstances the Government of the United States can only accept the proposal of the German Government for the arbitration of the meaning of Art. 19 of the treaty of 1799, upon the understanding that the „Appam“ depart from the territorial jurisdiction of the United States, in the event that the libel is dismissed by the court and after she has had a reasonable time to take on board such supplies as may be necessary, in the judgment of this Government, for a voyage to the nearest port subject to the sovereignty of Germany; and failing this, that she be released and the prize master and crew be interned for the remainder of the war.

Accept, etc. *Robert Lansing.*

Nr. 2000. Der französische Botschafter an Lansing, 9. April 1916. Der Dampfer „Sussex“ ist niemals für Truppentransporte benutzt worden.

(**E. W. 3,** S. 296.)

French Embassy, Washington, April 9, 1916.

My dear Mr. Secretary: I had asked my Government after our conversation the other day whether there was anything in the statement that the „Sussex“ had carried troops before, and might therefore have been supposed by the submarine to have been so employed when it was torpedoed — one of the many excuses put forth as an explanation of the cruel deed.

The answer reached me this morning: The „Sussex“ has never transported troops. As was well known to all, she has been plying for many years between Dieppe and England, and was following, when torpedoed, her usual route, well known also to sailors. This is what allowed to find her after the disaster and to save part of the crew and passengers.

The route followed by transport ships is quite a different one.

Believe me, etc. *Jusserand.*

Nr. 2001. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin.

(**A. A. U.***) Nr. 25.)

Berlin, den 10. April 1916.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard,* auf die Schreiben vom 29. und 30. vorigen Monats sowie vom 3. d. M. (Nr. 8876, 8850 A, 8901, 8902, 8933 und 9010) über die Dampfer „Sussex“, „Manchester Engineer“, „Englishman“, „Berwind Vale“ und „Eagle Point“ mitzuteilen, daß die erwähnten Fälle gemäß den diesseitigen Noten vom 30. und 31. v. M. sowie vom 4. und 5. d. M. von dem Admiralstab der Marine einer sorgfältigen Prüfung unterzogen worden sind, die zu nachstehenden Ergebnissen geführt hat.

I. Englischer Dampfer „Berwind Vale“.

Ein Dampfer, der möglicherweise der „Berwind Vale“ gewesen ist, wurde am 16. März, abends in Sicht des Leuchtfeuers von Bullrock an der irischen Küste von einem deutschen Unterseeboot angetroffen. Sobald der Dampfer das über Wasser fahrende Unterseeboot bemerkte, drehte er ab und lief weg.

*) S. auch **E. W. 3,** S. 238—241. Herausgeber.

Er wurde durch einen Warnungsschuß zum Stoppen aufgefordert, beachtete aber diese Warnung nicht, sondern löschte sämtliche Lichter und versuchte zu entkommen. Daraufhin wurde er beschossen, bis er stoppte und ohne weitere Aufforderung mehrere Boote zu Wasser fierte. Nachdem die Besatzung in die Boote gegangen war und genügend Zeit erhalten hatte, um wegzurudern, wurde das Schiff versenkt. Der Name dieses Dampfers ist nicht festgestellt. Auch mit Hilfe der Angaben, die von seiten der amerikanischen Botschaft gemacht worden sind, läßt sich nicht mit Sicherheit sagen, daß der vorstehend geschilderte Vorfall den Dampfer „Berwind Vale“ betrifft. Da aber der versenkte Dampfer ein Tankdampfer war, ebenso wie der „Berwind Vale“, dürfte die Identität der Schiffe anzunehmen sein; in diesem Falle würde allerdings die dortige Angabe, daß der „Berwind Vale“ ohne Warnung torpediert worden sei, mit den Tatsachen im Widerspruch stehen.

II. Englischer Dampfer „Englishman“.

Dieser Dampfer wurde am 24. März von einem deutschen Unterseeboot etwa 20 Seemeilen westlich von Islay durch zwei Warnungsschüsse zum Stoppen aufgefordert, lief aber weiter, ohne sich um die Warnung zu kümmern und wurde daher von dem Unterseeboot durch Artilleriefeuer nach längerer Verfolgung gezwungen, zu stoppen, worauf er ohne weitere Aufforderung Boote aussetzte. Nachdem der deutsche Kommandant sich davon überzeugt hatte, daß die Besatzung in die Boote gestiegen und vom Schiffe weggerudert war, versenkte er den Dampfer.

III. Englischer Dampfer „Manchester Engineer“.

Durch die bisherige Untersuchung hat sich nicht feststellen lassen, ob der Angriff auf diesen Dampfer, der nach der dortigen Darstellung am 27. März in der Höhe von Waterford stattgefunden hat, auf ein deutsches Unterseeboot zurückzuführen ist. Die Angaben über Ort und Zeit geben keinen genügenden Anhalt für die Untersuchung. Es wäre daher erwünscht, genauere Angaben über Ort, Zeit und Begleitumstände des der amerikanischen Regierung gemeldeten Angriffs zu erhalten, damit daraufhin die Untersuchung zum Abschluß gebracht werden kann.

IV. Englischer Dampfer „Eagle Point“.

Dieser Dampfer wurde am 28. März vormittags etwa 100 — nicht 130 — Seemeilen von der Südwestküste Irlands entfernt von einem deutschen Unterseeboot durch Signal und Schuß aufgefordert zu stoppen, lief jedoch weiter. Daraufhin wurde auf ihn geschossen, bis er stoppte und ohne weitere Aufforderung zwei Boote zu Wasser brachte, in die sich die Besatzung begab. Nachdem sich der Kommandant überzeugt hatte, daß die Boote, die Segel gesetzt hatten, vom Dampfer freigekommen waren, versenkte er den Dampfer.

Zur Zeit der Versenkung herrschte Nordnordwestwind von Stärke 2, nicht „stürmischer Wind“, und leichte Dünung, nicht „schwere See“, wie in der dortigen Darstellung angegeben ist. Die Boote hatten auch alle Aussicht, sehr bald aufgenommen zu werden, da der Ort der Versenkung auf einem viel benutzten Dampferwege lag. Wenn die Besatzung des Dampfers zu ihrer Rettung nur zwei kleine Boote in Gebrauch nahm, so trifft sie selbst die Schuld, denn auf dem Dampfer befanden sich, wie das Unterseeboot feststellen konnte, noch mindestens vier große Faltboote.

V. Französischer Dampfer „Sussex“.

Die Feststellung, ob der Kanaldampfer „Sussex“ von einem deutschen Unterseeboot beschädigt worden ist oder nicht, ist dadurch außerordentlich erschwert worden, daß keine genauen Angaben über Ort, Zeit und Begleitumstände der Versenkung bekannt waren, auch ein Bild dieses Schiffes bis

zum 6. April nicht erlangt werden konnte. Infolgedessen hat die Untersuchung auf alle Unternehmungen ausgedehnt werden müssen, die an dem in Frage kommenden Tage, dem 24. März, im Kanal etwa auf dem Wege zwischen Folkestone und Dieppe überhaupt stattgefunden haben.

In diesem Gebiet ist am 24. März ungefähr in der Mitte des englischen Kanals von einem deutschen Unterseeboot ein langes, schwarzes Fahrzeug ohne Flagge mit grauem Schornstein und kleinem, grauen Aufbau sowie mit zwei hohen Masten angetroffen worden. Der deutsche Kommandant gewann die bestimmte Ueberzeugung, daß er ein Kriegsschiff, und zwar einen Minenleger der neugebauten englischen Arabis-Klasse, vor sich habe. Er wurde zu dieser Ueberzeugung geführt:

1. durch das glatt durchlaufende Deck des Schiffes,
2. durch die kriegsschiffmäßige, schräg nach hinten und unten abfallende Form des Hecks,
3. durch den kriegsschiffmäßigen Anstrich,
4. durch die hohe Geschwindigkeit von etwa 18 Seemeilen, die das Schiff entwickelte,
5. durch den Umstand, daß das Schiff nicht den Weg nördlich der Leuchttonnen zwischen Dungeneß und Beachy Head innehielt, der nach den häufigen, übereinstimmenden Beobachtungen der deutschen Unterseeboote für die Handelsschiffahrt üblich ist, sondern mitten im Kanal, mit dem Kurs ungefähr auf Le Havre, fuhr.

Infolgedessen griff das Schiff um 3 Uhr 55 Minuten nachmittags mitteleuropäischer Zeit $1^1/_2$ Seemeilen südöstlich der Bullrock-Bank unter Wasser an. Der Torpedo traf und rief im Vorschiff eine so schwere Explosion hervor, daß das ganze Vorschiff bis zur Brücke abriß. Die besonders starke Explosion läßt mit Sicherheit darauf schließen, daß an Bord große Munitionsmengen vorhanden waren.

Der deutsche Kommandant hat eine Skizze des von ihm angegriffenen Schiffes angefertigt, von der zwei Abzeichnungen beigefügt werden. Das ebenfalls in zwei Exemplaren angeschlossene Bild des Dampfers „Sussex" ist aus der englischen Zeitung „Daily Graphic" vom 27. v. M. in photographischer Wiedergabe entnommen. Die Vergleichung der Skizze und des Bildes zeigt, daß der „Sussex" mit dem angegriffenen Fahrzeug nicht identisch ist; besonders auffallend ist der Unterschied in der Stellung des Schornsteins und der Form des Hecks. Ein weiterer Angriff hat in der für den „Sussex" in Frage kommenden Zeit auf dem Wege zwischen Folkestone und Dieppe seitens deutscher Unterseeboote überhaupt nicht stattgefunden.

Hiernach muß die deutsche Regierung annehmen, daß die Beschädigung des „Sussex" auf eine andere Ursache als auf den Angriff eines deutschen Unterseebootes zurückzuführen ist. Zur Aufklärung des Sachverhalts ist vielleicht die Tatsache dienlich, daß allein am 1. und 2. April im Kanal nicht weniger als 26 englische Minen von deutschen Seestreitkräften abgeschossen worden sind; überhaupt ist die ganze dortige Meeresgegend durch treibende Minen und nicht gesunkene Torpedos gefährdet. Vor der englischen Küste wird sie ferner auch durch deutsche Minen, die gegen die feindlichen Seestreitkräfte ausgelegt werden, in zunehmendem Maße gefährdet sein.

Sollte der amerikanischen Regierung weiteres Material zur Beurteilung des Falles „Sussex" zur Verfügung stehen, so darf die deutsche Regierung um dessen Mitteilung bitten, um auch dieses Material einer Prüfung unterziehen zu können. Für den Fall, daß sich hierbei Meinungsverschiedenheiten zwischen den beiden Regierungen ergeben sollten, erklärt sich die deutsche Regierung schon jetzt bereit, den Tatbestand durch eine gemischte Untersuchungskommission gemäß dem dritten Titel des Haager Abkommens zur

friedlichen Erledigung internationaler Streitfälle vom 18. Oktober 1907 feststellen zu lassen.

Indem der Unterzeichnete bittet, der Regierung der Vereinigten Staaten von vorstehendem Kenntnis zu geben, benutzt er diesen Anlaß, um dem Herrn Botschafter den Ausdruck seiner ausgezeichnetsten Hochachtung zu erneuern. gez. *Jagow.*

Seiner Exzellenz dem Botschafter
der Vereinigten Staaten Herrn *James W. Gerard.*

Nr. 2002. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts, 20. April 1916.

(**A. A. U.***) Nr. 26.)

Berlin, April 20, 1916.

Excellency,

I did not fail to transmit immediately, by telegraph, to my Government Your Excellency's note of the 10th instant in regard to certain attacks by German submarines, and particularly in regard to the disastrous explosion which on March 24 last, wrecked the French steamship „Sussex“ in the English Channel. I have now the honor to deliver, under instructions from my Government, the following reply to Your Excellency:

Information now in the possession of the Government of the United States fully establishes the facts in the case of the „Sussex“, and the inferences which my Government has drawn from that information it regards as confirmed by circumstances set forth in Your Excellency's note of the 10th instant. On the 24th of March, 1916, at about 2.50 o'clock in the afternoon, the unarmed steamer „Sussex“, with three hundred and twentyfive or more passengers on board, among whom were a number of American citizens, was torpedoed while crossing from Folkestone to Dieppe. The „Sussex“ had newer been armed; was a vessel known to be habitually used only for the conveyance of passengers across the English Channel; and was not following the route taken by troop ships or supply ships. About eighty of her passengers, noncombatants of all ages and sexes, including citizens of the United States, were killed or injured.

A careful, detailed, and scrupulously impartial investigation by naval and military officers of the United States has conclusively established the fact that the „Sussex“ was torpedoed without warning or summons to surrender and that the torpedo by which she was struck was of German manufacture. In the view of the Government of the United States these facts from the first made the conclusion that the torpedo was fired by a German submarine unavoidable. It now considers that conclusion substantiated by the statements of Your Excellency's note. A full statement of the facts upon which the Government of the United States has based its conclusion is inclosed.

The Government of the United States, after having given careful consideration to the note of the Imperial Government of the 10th of April, regrets to state that the impression made upon it by the statements, and proposals contained in that note is that the Imperial Government has failed to appreciate the gravity of the situation which has resulted, not alone from the attack on the „Sussex“ but from the whole method and character of submarine warfare as disclosed by the unrestrained practice of the commanders

*) S. auch **E. W. 3,** S. 241—248. Herausgeber.

of German undersea craft during the past twelvemonth and more in the indiscriminate destruction of merchant vessels of all sorts, nationalities, and destinations. If the sinking of the „Sussex“ had been an isolated case the Government of the United States might find it possible to hope that the officer who was responsible for that act had wilfully violated his orders or had been criminally negligent in taking none of the precautions they prescribed, and that the ends of justice might be satisfied by imposing upon him an adequate punishment, coupled with a formal disavowal of the act and payment of a suitable indemnity by the Imperial Government. But, though the attack upon the „Sussex“ was manifestly indefensible and caused a loss of life so tragical as to make it stand forth as one of the most terrible examples of the inhumanity of submarine warfare as the commanders of German vessels are conducting it, it unhappily does not stand alone.

On the contrary, the Government of the United States is forced by recent events to conclude that is is only one instance, even though one of the most extreme and most distressing instances, of the deliberate method and spirit of indiscriminate destruction of merchant vessels of all sorts, nationalities, and destinations which have become more and more unmistakable as the activity of German undersea vessels of war has in recent months been quickened and extended.

The Imperial Government will recall thas when, in February, 1915, it announced its intention of treating the waters surrounding Great Britain and Ireland as embraced within the seat of war and of destroying all merchant ships owned by its enemies that might be found within that zone of danger, and warnedall vessels, neutral as well as belligerent, to keep out of the waters thus proscribed or to enter them at their peril, the Government of the United States earnestly protested. It took the position that such a policy could not be pursued without constant gross and palpable violations of the accepted law of nations, particularly if submarine craft were to be employed as its instruments, inasmuch as the rules prescribed by that law, rules founded on the principles of humanity and established for the protection of the lives of noncombatants at sea, could not in the nature of the case be observed by such vessels. It based its protest on the ground that persons of neutral nationality and vessels of neutral ownership would be exposed to extreme and intolerable risks; and that no right to close any part of the high seas could lawfully be asserted by the Imperial Government in the circumstances then existing. The law of nations in these matters, upon which the Government of the United States based that protest, is not of recent origin or founded upon merely arbitrary principles set up by convention. It is based, on the contrary, upon manifest principles of humanity and has long been established with the approval and by the express assent of all civilized nations.

The Imperial Government notwithstanding persisted in carrying out the policy announced, expressing the hope that the dangers involved, at any rate to neutral vessels, would be reduced to a minimum by the instructions which it had issued to the commanders of its submarines, and assuring the Government of the United States that it would take every possible precaution both to respect the rights of neutrals and to safeguard the lives of noncombatants.

In pursuance of this policy of submarine warfare against the commerce of its adversaries, thus announced and thus entered upon in despite of the solemn protest of the Government of the United States, the commanders of the Imperial Government's undersea vessels have carried on practices of such ruthless destruction which have made it more and more evident as the months have gone by that the Imperial Government has found it impracticable to

put any such restraints upon them as it had hoped and promised to put. Again and again the Imperial Government has given its solemn assurances to the Government of the United States that at least passenger ships would not be thus dealt with, and yet it has repeatedly permitted its undersea commanders to disregard those assurances with entire impunity. As recently as February last it gave notice that it would regard all armed merchantmen owned by its enemies as part of the armed naval forces of its adversaries and deal with them as with men-of-war, thus, at least by implication, pledging itself to give warning to vessels which were not armed and to accord security of life to their passengers and crews; but even this limitation their submarine commanders have recklessly ignored.

Vessels of neutral ownership, even vessels of neutral ownership bound from neutral port to neutral port, have been destroyed along with vessels of belligerent ownership in constantly increasing numbers. Sometimes the merchantmen attacked have been warned and summoned to surrender before being fired on or torpedoed; sometimes their passengers and crews have been vouchsafed the poor security of being allowed to take to the ship's boats before the ship was sent to the bottom. But again and again no warning has been given, no escape even to the ship's boats allowed to those on board. Great liners like the „Lusitania" and „Arabic" and mere passenger boats like the „Sussex" have been attacked without a moment's warning, often before they have even become aware that they were in the presence of an armed ship of the enemy, and the lives of noncombatants, passengers, and crew have been destroyed wholesale and in a manner which the Government of the United States can not but regard as wanton and without the slightest color of justification. No limit of any kind has in fact been set to their indiscriminate pursuit and destruction of merchantmen of all kinds and nationalities within the waters which the Imperial Government has chosen to designate as lying within the seat of war. The roll of Americans who have lost their lives upon ships thus attacked and destroyed has grown month by month until the ominous toll has mounted into the hundreds.

The Government of the United States has been very patient. At every stage of this distressing experience of tragedy after tragedy it has sought to be governed by the most thoughtful consideration of the extraordinary circumstances of an unprecedented war and to be guided by sentiments of very genuine friendship for the people and Government of Germany. It has accepted the successive explanations and assurances of the Imperial Government as of course given in entire sincerity and good faiht, and has hoped, even against hope, that it would prove to be possible for the Imperial Government so to order and control the acts of its naval commanders as tos quare its policy with the recognized principles of humanity as embodied in the law of nations. It has made every allowances for unprecedented conditions and has been willing to wait until the facts became unmistakable and were susceptible of only one interpretation.

It now owes it to a just regard for its own rights to say to the Imperial Government that that time has come. It has become painfully evident to it that the position which it took at the very outset is inevitable, namely, the use of submarines for the destruction of an enemy's commerce, is, of necessity, because of the very character of the vessels employed and the very methods of attack which their employment of course involves, utterly incompatible with the principles of humanity, the longestablished and incontrovertible rights of neutrals, and the sacred immunities of noncombatants.

If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States

must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity, the Government of the United States is at last forced to the conclusion that there is but one course it can pursue. Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether. This action the Government of the United States contemplates with the greatest reluctance but feels constrained to take in behalf of humanity and the rights of neutral nations.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

(Signed) *James W. Gerard.*

Enclosure: Statement of facts.

His Excellency Mr. *von Jagow*,
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Statement of Facts in „Sussex“ Case, accompanying note to German Government of April eighteenth, nineteen sixteen.

The French channel steamer „Sussex“, employed regularly in passenger service between the Ports of Folkestone, England, and Dieppe, France, as it had been for years (French Foreign Office), left Folkestone for Dieppe at one twenty-five p. m., March twenty-fourth, nineteen sixteen, with three hundred twenty-five passengers and a crew of fifty-three men. (Declaration of Captain *Mouffet*; Rear Admiral *Grasset's* report.) The passengers, among whom were about twenty-five American citizens (Telegram London Embassy March twenty-fifth, and Paris Embassy, March twenty-sixth and twenty-eight), were of several nationalities, and many of them were women and children, and nearly half of them subjects of neutral states. (Report of Commander *Sayles* and Lieutenant *Smith*; Rear Admiral *Grasset's* report.) The „Sussex“ carried no armament (French Foreign Office; report of Commander *Sayles* and Lieutenant *Smith*, affidavits of American passengers), has never been employed as a troop ship, and was following a route not used for transporting troops from Great Britain to France. (British Admiralty statement; French Foreign Office.) The steamer proceeded on its course almost due south after passing Dungeness. (Declaration of Captain *Mouffet.*) The weather was clear and the sea smooth. (Affidavits of *Edna Hale, John H. Hearley, Gertrude W. Warren.*) At two fifty p. m., when the „Sussex“ was about thirteen miles from Dungeness (declaration of Captain *Mouffet*), the captain of the vessel, who was on the bridge, saw about one hundred fifty meters from the ship, on the port side, the wake of a torpedo. (Declaration of Captain *Mouffet.*) It was also seen very clearly by the first officer and the boatswain who were with the captain on the bridge. (Report of Rear Admiral *Grasset.*) Immediately the Captain gave orders to port the helm and stop the starboard engine (declaration of Captain *Mouffet*), the purpose being to swing the vessel to starboard so as to dodge the torpedo by allowing it to pass along the port bow on a line converging with the altered course of the steamer. Before, however, the vessel could be turned far enough to avoid crossing the course of the torpedo, the latter struck the hull at an angle a short distance forward of the bridge, exploded, destroyed the entire forward part of the steamer as far back as the first water-tight bulkhead, carried away the foremast with the wireless antennae and killed or injured about eighty of the persons on board. (Declaration of Captain *Mouffet*; report of Rear Admiral *Grasset*; deposition of *Henry S. Beer.*)

At the time no other vessel was in sight. (Affidavits of *Samuel F. Bemis, T. W. Gulbertson, John H. Hearley*, and others.) The approach of the torpedo was witnessed by several other persons on the vessel. (Affidavits of *Samuel F. Bemis*, *Henry S. Beer*, *Gertrude W. Warren*.) One of these, an American citizen named *Henry S. Beer*, was leaning on the port rail about ten feet behind the bridge and gazing seaward when he saw the approaching torpedo about one hundred yards away and exclaimed to his wife and companion: „A torpedo!“ Immediately following his exclamation the missile struck the vessel. (Depositions of *Henry S. Beer* and Mrs. *Henry S. Beer*.) In further corroboration of the fact, that the captain saw the torpedo coming toward the vessel, is the sworn statement of the engineers on duty that the order to port the helm and to stop the starboard engine was received and obeyed. (Report of Rear Admiral *Grasset*.) No reasonable explanation can be given for this unusual order other than that the captain saw something which caused him to change his course sharply to starboard. In addition to this evidence, which would in itself appear to be conclusive that the agent of destruction was a torpedo, is that of Lieutenant *Smith*, U. S. A., attached to the American Embassy at Paris, who, accompanied by Major *Logan*, U. S. A. of the Embassy, went to Boulogne, inspected the hull of the „Sussex“ and personally found beneath the mass of water-soaked debris of the wreck fifteen pieces of metal, which they retained in their possession as they did not believe the pieces formed part of the vessel. The inspection of the hull disclosed that the vessel was wrecked by an external explosion, the boilers being intact, and that a short distance forward of the bridge was a large dent showing that the vessel had received a heavy blow, the direction of impact being from abaft the beam along a line at an acute angle with the keel of the vessel. (Report of Lieutenant *Smith*, cabled April first.) This evidence coincides with and corroborates the statement that the vessel was swinging to starboard and away from the torpedo when struck. The pieces of metal, which the American officers had collected, were compared by Lieutenant *Smith*, Lieutenant Commander *Sayles* and Major *Logan* with mines and plans of mines in possession of the French Naval authorities at Boulogne, Rochefort, and Toulon, and of the British Naval authorities at Portsmouth. These officers are positive in their opinion that these pieces of metal were not parts of a mine. (Report of Lieutenant *Smith*, cabled April second and fifth.) Among these fifteen pieces of metal weretwo screw-bolts showing the effects of an explosion, which were stamped with „K“ and „fifty-six“ on faces of the head of one, and „K“ and „fifty-eight“ on faces of the bead of the other. On examining German torpedoes in the possession of the French Naval authorities at Toulon, and of the English Naval authorities at Portsmouth, the American officers found that identical screws with the letter „K“ and a number were employed to fasten the „war“ head (Kopf) to the air chamber. (Lieutenant *Smith's* reports, cabled April second, fifth and thirteenth.) The screws used in French and English torpedoes have not markings and are of a slightly different size. (Same reports.) Furthermore, the American officers were able by comparison and close examination to positively identify and locate all the remaining thirteen pieces of metal as parts of a German torpedo, as follows:

Fragments three.
Parts of inner seat of water relief valve of engine valve.
Fragments four and five.
Punto bands of engine-room casing.
Fragments six to ten inclusive and twelve.
Parts of engine cylinders.

Fragments eleven, thirteen, fourteen, fifteen.

Parts of steel war head still bearing the destinctive red paint common to German torpedo war heads.

(Report of Lieutenant *Smith,* cabled April fifth). In view of these authenticated facts there can be no reasonable doubt but that the „Sussex" was torpedoed and that the torpedo was of German manufacture. As no vessel was seen by any person on the „Sussex", the conclusion is irresistible that the torpedo was launched without warning from a submarine which was submerged at the time of the attack and remained beneath the surface after the explosion. The conclusion thus reached from the evidence (the affidavits being those of American citizens) collected by the Department of State is substantiated by the statements in the Imperial Government's note of April tenth, nineteen sixteen. According to those statements

a) A German submarine torpedoed a steamer one and one half miles southeast of Bull Rock Bank.
(Comment.) The point of attack is exactly in the course which was taken by the „Sussex" after passing Dungeness and about one half mile from the place where the captain of the „Sussex" states he was torpedoed.

b) The attack took place at three fifty-five o'clock p. m. Central European time.
(Comment.) Three fifty-five p. m. Central European time would correspond to two fify-five p. m. Western European time. The time of the striking of the torpedo according to the captain of the „Sussex", and the stopping of the clocks on board the vessel, was two fifty p. m. Western European time.

c) The torpedo, when it struck, caused an explosion which tore away the whole foreship up to the bridge.
(Comment.) The forepart of the „Sussex" was wrecked as far back as the first water-tight bulkhead, according to the official reports.

d) The German submarine was submerged when the torpedo was launched and there is no statement that it came to the surface after the attack.
(Comment.) The conclusion was reached that the submarine was submerged from the fact that no one on the „Sussex" saw a submarine though the weather was fine.

e) No warning was given and no attempt was made to give one since it is not mentioned.
(Comment.) The evidence collected shows affirmatively no warning was given.

f) A sketch by the submarine commander of the steamer which he torpedoed does not agree with a photograph of the „Sussex" in the London Graphic.
(Comment.) This sketch was apparently made from memory of an observation of the vessel through a periscope. As the only differences noted by the commander, who relied on his memory, were the position of the smokestack and the shape of the stern, it is to be presumed the vessels were similar in other respects.

g) No other German submarines on that day attacked steamers in that locality.
(Comment.) As no vessel is reported to have been torpedoed without warning by a submerged submarine other than the „Sussex", it is beyond question that that vessel was torpedoed by the submarine whose commander's report is relied upon in the note of April tenth.

Lansing.

Nr. 2003. Mitteilung vom 22. April 1916 über Wilsons Adresse an den Kongreß hinsichtlich des deutschen Unterseebootkrieges. (Norddeutsche Allgemeine Zeitung Nr. 114 vom 25. April 1916.)

Washington, den 22. April 1916.

In der Adresse *Wilsons* an den Kongreß, die sich in großen Zügen an den Wortlaut der nach Berlin gesandten Note hält, wird ausführlich auf die ganze Unterseebootsfrage eingegangen, wie sie sich seit Februar 1915 entwickelt hat. Während der Verlesung der Adresse herrschte gespannte ernste Stille. Als *Wilson* mit dem Ausdrucke der Hoffnung, daß Deutschland so handeln werde, daß ein bedauerlicher Bruch mit Amerika abgewendet werden könnte, schloß, brach das Haus in Beifallsrufe aus. Wilson verlangte keinerlei Maßnahmen vom Kongreß.

New York, den 22. April 1916.

In seiner Adresse sagte der Präsident *Wilson*:

In Verfolgung der Unterseebootskriegführung gegen den Handel seiner Feinde, die Deutschland trotz des ernsten Einspruches unerer Regierung unternommen hat, haben die deutschen Unterseebootskommandanten Handelsschiffe mit immer größerer Lebhaftigkeit angegriffen, nicht nur auf hoher See um England und Irland herum, sondern wo immer sie sie antreffen konnten,. und in einer Weise, die immer und immer unbarmherziger und immer und immer unterschiedsloser wurde, und während die Monate dahingingen, weniger und weniger ohne Beobachtung irgendwelcher Schranken, und sie haben bedenkenlos ihre Angriffe auf Schiffe jeder Nationalität und Schiffe, die sich in jeder Art von Diensten befanden, gerichtet. Eine Tragödie auf See ist der anderen gefolgt in einer Weise und unter solchen Begleitumständen, daß offenbar wurde, daß diese Kriegführung, wenn das noch eine Kriegführung ist, nicht fortgesetzt werden kann ohne fühlbarste Verletzung der Gesetze der Menschlichkeit. Was auch die Ansicht und Absicht der deutschen Regierung ist, sie hat offenbar bewiesen, daß es ihr unmöglich ist, solche Angriffsmethoden auf den feindlichen Handel innerhalb der Grenzen zu halten, die durch Vernunft oder Menschlichkeit gesetzt werden. Einer der letzten und schrecklichsten Vorfälle dieser Kriegführung war die Vernichtung der „Sussex“. Diese muß, wie die Versenkung der „Lusitiana“, als ein so einzigartig tragischer und ungerechtfertiger Fall angesehen werden, daß sie ein schreckliches Beispiel für die Unmenschlichkeit der Unterseebootskriegführung ist, wie sie die Kommandanten der deutschen Fahrzeuge in den letzten zwölf Monaten betrieben haben. Wenn dieser Vorfall für sich allein dastünde, so könnte irgendeine Erklärung, eine Mißbilligung durch Deutschland, eine. Feststellung eines verbrecherischen Fehlers oder willkürlichen Ungehorsams seitens des Kommandanten des Fahrzeuges, das den Torpedo abgefeuert hat, gesucht oder angenommen werden; aber unglücklicherweise steht er nicht allein. Die jüngsten Ereignisse machen den Schluß unausweichlich, daß er nur ein Beispiel, obwohl eines der schwersten und betrübendsten Beispiele, ist für den Geist und die Art der Kriegführung, die die deutsche Regierung fälschlich angenommen hat, und die von Anfang an die deutsche Regierung dem Vorwurfe aussetzte, daß sie alle Rechte der Neutralen beiseite wirft, indem sie nur ihr eigenes augenblickliches Ziel im Auge hat. Die amerikanische Regierung hat sich bemüht, sich von jeder zu weitgehenden Handlung oder Einspruch durch bedächtige Erwägung der außerordentlichen Umstände dieses Krieges, der keinen Vorgänger in der Geschichte kennt, fernzuhalten, und ließ sich in allem, was sie sagte oder tat, von den Ge-

fühlen echter Freundschaft leiten, die immer das Volk der Vereinigten Staaten gegenüber dem deutschen Volke gehegt hat und·auch fortfährt zu hegen.

Mit Bezug auf den Weg, der in Aussicht genommen worden ist, falls Deutschland nicht sofort einen Verzicht auf die gegenwärtige Art der Kriegführung gegen Passagier- und Frachtschiffe erklärt und in die Tat umsetzt, sagte *Wilson:* Zu dieser Entscheidung bin ich mit schmerzlichstem Bedauern gekommen. Ich bin sicher, daß alle bedachtsamen Amerikaner der Möglichkeit eines Vorgehens, wie es in Aussicht genommen ist, 'mit aufrichtigem Widerstreben entgegensehen werden; aber wir dürfen nicht vergessen, daß wir in gewisser Weise und durch den Zwang der Umstände die verantwortlichen Wortführer für die Rechte der Menschheit sind, und daß wir nicht stillschweigend dabeistehen dürfen, während diese Rechte allmählich vollständig beiseite gefegt werden.

Im zermalmenden Strome dieses schrecklichen Krieges sind wir es mit Rücksicht auf unsere eigenen Rechte als Nation sowie unserem Pflichtgefühl als Vertreter der Rechte der Neutralen in der ganzen Welt und einer gerechten Auffassung der Rechte der Menschheit schuldig, jetzt mit äußerstem Ernst und Festigkeit den Standpunkt einzunehmen, den ich eingenommen habe, und zwar im Vertrauen darauf, daß ich Ihre Billigung und Ihren Beistand finden werde. Alle ernst denkenden Männer müssen sich in der Hoffnung vereinigen, daß die deutsche Regierung, die in anderen Fällen als Verfechter alles dessen dagestanden hat, für das wir jetzt im Interesse der Menschlichkeit eintreten, die Berechtigung unserer Forderungen anerkennen möge und ihnen in dem Geiste begegnen wird, in dem sie gestellt worden sind.

Nr. 2004. Antwort des britischen Botschafters in Washington vom 24. April 1916 auf die amerikanische Note vom 5. November 1915.

(**Misc. 15 [1916]**, S. 19—32.)

The communication addressed by the United States Ambassador in London to Sir *E. Grey* on the 5th November, 1915, has received the careful attention of His Majesty's Government in consultation with their Allies the French Government, and His Majesty's Government have now the honour to make the following reply:

2. The first section (paragraphs 3—15) of the United States note relates to cargoes detained by the British authorities in order to prevent them from reaching an enemy destination, and the complaint of the United States Government is summarised in paragraph 33 to the effect that the methods sought to be employed by Great Britain to obtain and use evidence of enemy destination of cargoes bound for neutral ports and to impose a contraband character upon such cargoes are without justification.

3. The wording of this summary suggests that the basis of the complaint of the United States Government is not so much that the shipments intercepted by the naval forces were really intended for use in the neutral countries to which they were despatched, as that the despatch of goods to the enemy countries has been frustrated by methods which have not been employed by belligerent nations in the past. It would seem to be a fair reply to such a contention that new devices for despatching goods to the enemy must be met by new methods of applying the fundamental and acknowledged principle of the right to intercept such trade.

4. The question whether the exercise of the right of search can be restricted to search at sea was dealt with in Sir *E. Grey's* note of the 7th January, 1915, and His Majesty's Government would again draw attention

to the facts that information has constantly reached them of attempts to conceal contraband intended for the enemy in innocent packages, and that these attempts can only be frustraded by examination of the ship and cargo in port. Similarly, in Sir *E. Grey's* note of the 10th February, 1915, it was pointed out that the size of modern steamships, and their capacity to navigate the waters where the Allied patrols have to operate whatever the conditions of the weather, frequently render it a matter of extreme danger, if not of impossibility, even to board the vessels unless they are taken into calm water for the purpose. It is unnecessary to repeat what was said in that note. There is nothing that His Majesty's Government could withdraw, or that the experience of the officers of the Allied fleets has tended to show was inaccurate.

5. When visit and search at sea are possible, and when a search can be made there which is sufficient to secure belligerent rights, it may be admitted that it would be an unreasonable hardship on merchant vessels to compeld them to come into port, and it may well be believed that maritime nations have hesitated to modify the instructions to their naval officers that it is at sea that these operations should be carried out, and that undue deviation of the vessel from her course must be avoided. That, however, does not affect the fact that it would be impossible under the conditions of modern warfare to confine the rights of visit and search to an examination of the ship at the place where she is encountered without surrendering a fundamental belligerent right.

6. The effect of the size and seaworthiness of merchant vessels upon their search at sea is essentially a technical question, and accordingly His Majesty's Government have thought it well to submit the report of the board of naval experts, quoted by the United States Ambassador in paragraph 7 of this note, to Admiral Sir *John Jellicoe* for his observations. The unique experience which this officer has gained as the result of more than eighteen months in command of the Grand Fleet renders his opinion of peculiar value. His report is as follows:

> „It is undoubtedly the case that the size of modern vessels is one of the factors which renders search at sea far more difficult than in the days of smaller vessels. So far as I know, it has never been contended that it is necessary to remove every package of a ship's cargo to establish the character and nature of her trade, &c.; but it must be obvious that the larger the vessel and the greater the amount of cargo, the more difficult does examination at sea become, because more packages must be removed.
>
> This difficulty is much enhanced by the practice of concealing contraband in bales of hay and passengers' luggage, casks, &c., and this procedure, which has undoubtedly been carried out, necessitates the actual removal of a good deal of cargo for examination in suspected cases. This removal cannot be carried out at sea, except in the very finest weather.
>
> Further, in a large ship, the greater bulk of the cargo renders it easier to conceal contraband, especially such valuable metals as nickel, quantities of which can easily be stowed in places other than the holds of a large ship.
>
> I entirely dispute the contention, therefore, advanced in the American note, that there is no difference between the search of a ship of 1000 tons and one of 20000 tons. I am sure that the fallacy of the statement must be apparent to anyone who has ever carried out such a search at sea.

There are other facts, however, which render it necessary to bring vessels into port for search. The most important is the manner in which those in command of German submarines, in entire disregard of international law and of their own prize regulations, attack and sink merchant vessels on the high seas, neutral as well as British, without visiting the ship and therefore without any examination of the cargo. This procedure renders it unsafe for a neutral vessel which is being examined by officers from a British ship to remain stopped on the high seas, and it is therefore in the interests of the neutrals themselves that the examination should be conducted in port.

The German practice of misusing United States passports in order to procure a safe conduct for military persons and agents of enemy nationality makes it necessary to examine closely all suspect persons, and to do this effectively necessitates bringing the ship into harbour."

7. Sir *John Jellicoe* goes on to say:

„The difference between the British and the German procedure is that we have acted in the way which causes the least discomfort to neutrals. Instead of sinking neutral ships engaged in trade with the enemy, as the Germans have done in so many cases in direct contravention of article 113 of their own Naval Prize Regulations, 1909, in which it is laid down that the commander is only justified in destroying a neutral ship which has been captured if

a) She is liable to condemnation; and

b) The bringing in might expose the warship to danger or imperil the success of the operations in which she is engaged at the time

we examine them, giving as little inconvenience as modern naval conditions will allow, sending them into port only where this becomes necessary.

It must be remembered, however, that it is not the Allies alone who send a percentage of neutral vessels into port for examination, for it is common knowledge that German naval vessels, as stated in paragraph 19 of the American note, 'seize and bring into German ports neutral vessels bound for Scandinavian and Danish ports'.

„As cases in point, the interception by the Germans of the American oil-tankers 'Llama' and 'Platuria' in August last may be mentioned. Both were bound to America from Sweden, and were taken into Swinemünde for examination."

8. The French Ministry of Marine shares the views expressed by Sir *J. Jellicoe* on the question of search at sea, and has added the following statement:

„La pratique navale, telle qu'elle existait autrefois et consistant à visiter les navires en mer, méthode que nous a léguée l'ancienne marine, ne s'adapte plus aux conditions de la navigation actuelle. Les Américains ont pressenti son insuffisance et ont prévu la nécessité de lui en substituer une plus efficace. Dans les Instructions données par le Département de la Marine américaine, du 20 juin, 1898, aux croiseurs des États-Unis, on trouve déjà la prescription suivante:

'Si ces derniers (les papiers de bord) indiquent de la contrebande de guerre, le navire devra être saisi; sinon, il sera laissé libre, à moins qu'en raison de puissants motifs de suspicion, une visite plus minutieuse paraisse devoir être exigée"*).

*) Navy Department, General, No. 492, „Instruction to Blockading Vessels and Cruisers", paragraph 13.

Toute méthode doit se modifier en tenant compte des transformations subies par le matériel que les hommes ont à leur disposition, à la condition de rester une méthode humaine et civilisée.

L'Amirauté française estime qu'aujord'hui un navire, pour être visité, doit être dérouté sur un port toutes les fois que l'état de la mer, la nature, le poids, le volume, l'arrimage de la cargaison suspecte, en même temps que l'obscurité et l'absence de précision des papiers de bord, rendent la visite en mer pratiquement impossible ou dangereuse pour le navire visité.

Au contraire, lorsque les circonstances inverses existent, la visite doit être faite en mer.

Le déroutement est également nécessaire et justifié, lorsque, le navire neutre entrant dans la zone ou le voisinage des hostilités, 1. il importe, dans l'intérêt même du navire neutre, d'éviter à ce dernier une série d'arrêts et de visites successives et de faire établir, une fois pour toutes, son caractère inoffensif et de lui permettre ainsi de continuer librement sa route sans être molesté; et 2. le belligérant, dans son droit de légitime défense, est fondé à exercer une surveillance particulière sur les navires inconnus qui circulent dans ces parages."

9. The question of the locality of the search is, however, one of secondary importance. In the view of His Majesty's Government the right of a belligerent to intercept contraband on its way to his enemy is fundamental and incontestable, and ought not to be restricted to intercepting contraband which happens to be accompanied on board the ship by proof sufficient to condemn it. What is essential is to determine whether or not the goods were on their way to the enemy. If they were, a belligerent is entitled to detain them, and having regard to the nature of the struggle in which the Allies are engaged they are compelled to take the most effectual steps to exercise that right.

10. The United States note then passes to the subject of the procedure in the Prize Courts, and maintains that Courts of Prize have hitherto been bound, by well-established and long-settled practice, to consider at the first hearing only the ship's papers and documents and the answers to the standing interrogatories, and to exclude all other evidence unless and until an order has been made for „further proof". Attention is drawn to the fact that the above practice, which had been followed by the British Prize Courts for over a century, and also by the Prize Courts of the United States, was changed by the Prize Court rules issued by His Majesty's Government at the outbreak of the present war. Upon this matter His Majesty's Government have to point out that they recognised some years argo that modern conditions had rendered the old rules obsolete, and new rules had been prepared under the guidance and supervision of the late Lord *Gorell,* whose experience as President of the Admiralty Division of the High Court of Justice rendered him well qualified to deal with the subject. Twenty months' experience of the working of the new rules in the Prize Court has served to show the utility of the changes.

11. It may further be pointed out that the practice and procedure adopted in Prize Courts are not settled or regulated by international law, but they are determined by each nation for itself. The procedure described in the United States note was gradually evolved in the British Courts, and. though it was adopted by the United States, it has never been followed in the Prize Courts of France or of any other continental nation, nor does the fact that the United States followed the British practice prevent Great Britain or any other of the Allied nations from introducing such changes in the pro-

cedure as modern circumstances may call for. International law only requires that the practice in Prize Courts of the belligerent nation should afford a fair hearing to all claims put forward by neutrals, and should enable the Court to arrive at a just conclusion upon the evidence. Subject to that condition, each nation may regulate the practice to be followed in its Prize Courts. As an instance, the recent Italian decree of 30th May, 1915, may be quoted, in art. 6 of which it is enacted that the Prize Court „will draw up rules of procedure for its future guidance“. The division of Prize Court proceedings into two distinct phases, the first hearing and the hearing on further proof, under the early British and the American practice, was merely a rule of procedure. Similarly the exclusion of extraneous evidence until the making of an order for further proof was only a rule of procedure. His Majesty's Government were, therefore, not only at liberty but felt bound to alter these rules so soon as they were advised that the rules were obsolete and might work injustice.

12. The old practice and procedure had become archaic in form and belonged to days long before the modern improvements in legal procedure were developed, days when, for instance, the parties interested were prevented from giving any evidence as witnesses in actions which affected their rights. The alterations in the Prize Court practice and rules were conceived and made in the spirit of those improvements. The objects with which the old practice was abolished were to prevent delay, to eliminate technicalities, and to enable the parties to prove all the true and material facts, and to place their respective cases fully before the Court.

13. Moreover, it must be remembered that the conditions under which goods are conveyed by sea from one country to another have completely changed. In the days when the old rules were developed the ship's papers were a safe and satisfactory guide as to the nature and destination of the cargo. It the ship's papers had not indicated the true object and purpose of the consignment, the consignee would have been uncertain what to do with the goods when they arrived, and the commercial transaction would have been hampered, for there were in those days no fast mails or telegraph cables by which supplementary information could be conveyed. If there were no ship's papers, or if they obviously were not genuine, it was a ground for condemnation. When there was no reason to doubt them, the Court could safely take the papers as indicating the real transaction. Nowadays the conditions have changed: the papers may outwardly be perfectly genuine and complete, yet they may have been prepared with the express purpose of concealing the real nature of the transaction. These misleading papers would not, however, occasion any difficulty in dealing with the goods on their arrival, because the necessary instructions to the consignee can be conveyed by other means. Consequently the old rule that the papers on board the ship must alone be taken into consideration, and evidence from other sources excluded, is no longer practicable; indeed, the system of attributing to the ship's papers the character of final and conclusive proof upheld in the United States note would encourage shippers of contraband to falsify the papers, as they would thereby ensure absolute immunity from capture. It is in the same way due to change of circumstances that the evidence of the master and members of the crew has ceased to be of much importance in the majority of prize cases; they usually now know nothing of the real destination of the cargo they are transporting, and the more skilfully the despatch of goods with an enemy destination is contrived, the more effectually will it be concealed from those on board.

14. It may be doubted whether any belligerent Government would be ready to forgo the right of capture of goods on their way to an enemy in

every case where such destination was not disclosed by the ship's papers or the evidence of those on board the ship. The difficulty which United States naval officers found even as early as 1862 in complying with the old rule is illustrated by the quotation from Lord *Lyons*' note of the 22 nd April, 1863, in connection with the case of the „Magicienne", one of the cases which is dealt with in the appendix to this note, in which he drew attention to the habit of the United States cruisers of seizing vessels on the chance that something might possibly be discovered ex post facto which would prevent the captors from being condemned to pay damages.

15. The contention advanced by the United States Government in paragraph 9 of their note, that the effect of this new procedure is to subject traders to risk of loss, delay, and expense so great and so burdensome as practically to destroy much of the export trade of the United States to neutral countries in Europe, is not borne out by the official statistics published in the United States — nor by the reports of the Department of Commerce. The first nine months of 1915 may be taken as a period when the war conditions must have been known to all those engaged in commerce in the United States of America, and when any injurious effects of the Prize Court procedure would have been recognised. During that period the exports from the United States of America to the three Scandinavian countries and Holland, the group of neutral countries whose imports have been most affected by the naval operations of the Allies and by the procedure adopted in their Prize Courts, amounted to 274,037,000 dollars as compared with 126,763,000 dollars in the corresponding period of 1913. It is useless to take into account the corresponding figures of 1914 because of the dislocation of trade caused by the outbreak of war, but taking the pre-war months of 1914, the figures for 1913, 1914, and 1915, were as follows:

	Dollars
1913	97,480,000
1914	88,132,000
1915	234,960,000

16. In the face of such figures it seems impossible to accept the contention that the new Prize Court procedure in Great Britain has practically destroyed much of the export trade of the United States to neutral countries in Europe, and the inference is suggested that if complaints have been made to the Administration of Washington by would-be exporters, they emanated not from persons who desired to engage in genuine commerce with the neutral countries, but from those who desired to despatch goods to the enemy under cover of a neutral destination, and who found it more difficult to conceal the real facts from the Prize Courts under the new procedure.

17. At this point it would have been opportune to introduce a reply to the contention that appears at first sight to be advanced in paragraph 13 of the United States note that Great Britain, while interfering with foreign trade, has increased her own with neutral countries adjacent to Germany, but this is rendered unnecessary by the explanation given by Mr. *Page* at the time that he presented the note, and since confirmed by a statement given out to the press at Washington that no such meaning is to be attributed to the paragraph. Moreover, the subject has been dealt with in the note which Sir *E. Grey* sent to Mr. *Page* on the 13th August last, and again in the note given to the State Department by the British Ambassador at Washington on the 27th December.

18. The next passage in the United States note (paragraph 14) relates to the principle of non-interference with goods intended to become incorporated in the mass of merchandise for sale in a neutral country, or, as it is

more commonly known, with goods intended to be incorporated in the „common stock“ of the country. The United States Government urge with some force that trade statistics are not by themselves conclusive in establishing an enemy destination, and that such statistics require careful scrutiny. On the other hand, the mere fact that goods, no matter of what description or in what quantities, are ostensibly destined to form part of the common stock of a neutral country, cannot be regarded as sufficient evidence to prove their innocence or to justify the assertion that any attempt to raise questions as to their ulterior destination is unwarranted and inquisitorial. It is a matter of common knowledge that large quantities of supplies have since the war broke out passed to our enemy through neutral ports. It was pointed out in Sir *E. Grey's* note of the 23rd Juli, 1915, that it would be mere affectation to regard some of those ports as offering facilities only for the commerce of the neutral country in which they are situated. They have, in fact, been the main avenues through which supplies have reached the enemy from all parts of the world. In the case of goods consigned to these ports, the ships' papers convey no suggestion as to their ultimate destination, and every device which ingenuity can suggest, or which can be contrived by able and unscrupulous agents, is sesorted to for the purpose of giving to carefully organised arrangements for supplying the enemy the appearance of genuine transactions with a neutral country. His Majesty's Government cannot bring themselves to believe that it is the desire of the United States Government that traffic of this kind should be allowed to proceed without hindrance.

19. The question whether goods despatched to a neutral port were intended to become part of the mass of marchandiese for sale in that country is one of fact. Quite apart from the conclusions suggested by the figures, there is a considerable body of evidence that many of the goods which have been shipped to neutral ports during the war were never intended to become part of the common stock of that country, but were earmarked from the beginning for re-export to the enemy countries. If they had been intended to form part of the common stock, they would have been available for use in that country; yet at one time in the early days of the Allies' efforts to intercept all the commerce of the enemy, when they found it necessary to hold up certain cargoes of cotton on their way to Sweden, it transpired that though the quays and the warehouses of Gothenburg were congested with cotton, there was none available for the use of the spinners in Sweden.

20. Confirmation of the fact that many of the shipments to neutral ports were never intended to become part of the common stock of the country is also to be found in some of the contracts which have come to light since the policy of intercepting all commodities on their way to or from the enemy country was introduced. One of those which has been disclosed is a contract with a firm in Germany for the sale of no less than 50,000 bales of cotton linters at a price which was about double that which linters were fetching in any other country than Germany. The whole quantity was to be shipped to neutral ports. Various shipments made under this contract have been held up, and in all cases the goods were shipped with papers and under conditions which concealed the enemy destination altogether. Sweden ist not in normal times a large importer of cotton linters, and it certainly would not be reasonable to maintain that, because the ship's papers did not disclose this contract of sale or the enemy destination, shipments of linters under this contract should be regarded as intended to become part of the mass of merchandise for sale in Sweden.

21. However sound the principle that goods intended for incorporation in the common stock of a neutral country should not be treated as contra-

band may be in theory, it is one that can have but little application to the present imports of the Scandinavian countries. The circumstances of a large number of these shipments negative any conclusion that they are bonâ fide shipments for the importing countries. Many of them are made to persons who are apparently nominees of enemy agents, and who never figured before as importers of such articles. Consignments of meat products are addressed to lightermen and dock labourers. Several thousands of tons of such goods have been found documented for a neutral port and addressed to firms which do not exist there. Large consignments of similar goods were addressed to a baker, to the keeper of a small private hotel, or to a maker of musical instruments. Will it be contended that such imports ought to be regarded as bonâ fide shipments intended to become part of the common stock of the country?

22. Similarly several of the shipments which the Allied naval forces are now obliged to intercept consist of goods for which there is in normal circumstances no sale in the importing country, and it has already been pointed out in a recent decision in the British Prize Court that the rule about incorporation in the common stock of a neutral country cannot apply to such goods. The same line was taken in some of the decisions in the United States Prize Courts during the Civil War.

23. In the presence of facts such as those indicated above, the United States Government will, it is believed, agree with His Majesty's Government that no belligerent could in modern times submit to be bound by a rule that no goods could be seized unless they were accompanied by papers which established their destination to an enemy country, and that all detentions of ships and goods must uniformly be based on proofs obtained at the time of seizure. To press any such theory is tantamount to asking that all trade between neutral ports shall be free, and would thus render nugatory the exercise of sea power and destroy the pressure which the command of the sea enables the Allies to impose upon their enemy.

24. It is, of course, inevitable that the exercise of belligerent rights at sea, however reasonably exercised, must inconvenience neutral trade, and great pressure is being put upon the United States Government to urge the technical theory that there should be no interference at all with goods passing between neutral ports, and thus to frustrate the measures which the Allies have taken to intercept commerce on its way to or from the enemy. It may not be out of place to recall that the position is somewhat similar to that which arose in the United States in the war between the North and the South. All students of international law and of military history are aware that the blockade of the Southern States was the most important engine of pressure possessed by the North, and that it was on the point of being rendered ineffective through the use by blockade runners of neutral ports of access. It is well known that the United States Government took immediate steps to stop such trade, and that the United States Supreme Court extended the doctrine of continuous voyage so as to cover all cases where there was an intention to break the blockade by whatever means, direct or indirect.

25. The configuration of the European coast is such as to render neutral ports the most convenient for the passage of German commerce, and just as it was essential to the United States in the Civil War to prevent their blockade from being nullified by the use of neutral ports of access, so it is essential to the Allied Powers to-day to see that the measures which they are taking to intercept enemy commerce shall not be rendered illusory by the use of similar ports. The instructions issued by Mr. *Seward* during the

Civil War show that he regarded the continuance of the blockade against the Southern States as absolutely vital, and he repeatedly instructed American representatives abroad to assure foreign Governments that, while he was fully alive to the great inconveniences caused by the cutting-off of the supplies of cotton from Europe, yet he could not, as American Secretary of State, „sacrifice the Union for cotton". The American representatives in Europe in their published reports again and again expressed the opinion that, whatever might be the policy of the Government, the peoples of Europe would never consent to side with the Power that upheld slavery against the Power which represented freedom. Their opinion was entirely justified by the result, and in fact neither the French nor the English Governments took any decided steps towards breaking the blockade, in spite of the tremendous pressure which was brought to bear upon them, and the terrible suffering of the cotton operatives of this country. Indeed, President *Lincoln* himself acknowledged, in a message to the labouring classes of Manchester, his high sense of the spirit of selfsacrifice which they had exhibited in their policy towards America. His Majesty's Government have of course no desire to enter upon any examination of the issues involved in that historic conflict, but no one will question the respect which is due to the determination then shown by the French and British peoples not to range themselves on what they believed to be the side of slavery or consent to action which they held might be fatal to the democratic principle of Government, however great the pressure exerted by commercial interests might be.

26. His Majesty's Government desire to assure the United States Government that every effort is being made to distinguish between bonâ fide neutral commerce and that which is really intended for the enemy. The task is one of exceptional difficulty, and the statistics show that a great volume of imports intended for the enemy must have passed through adjacent neutral countries during the war. As an instance, the imports of lard into Sweden during the year 1915 may be taken. In that year the total import of lard into Sweden from all sources was 9 318 tons, of which no less than 9 029 tons came from the United States. In the three years before the war, 1911—13, the annual average import of the same article was only 888, of which 638 tons came from the United States. It is difficult to believe that the requirements of Sweden in respect of lard, even when every allowance is made for possible diversions of trade due to the war, could suddenly have increased more than tenfold in 1915. The inference, indeed, is irresistible that the greater part of these imports must have had another and an enemy destination.

27. It may readily be conceded that the efforts to intercept enemy commerce passing through neutral countries cannot fail to produce some soreness and dissatisfaction. His Majesty's Government have therefore spared no pains in their endeavour to mitigate the inconvenience which must inevitably be occasioned to neutral traders. In pursuance of this object they are resorting to the policy of ascertaining the total requirements of the country concerned, and intercepting such imports as may be presumed, because they are in excess of those requirements, to form no part of the normal trade of the country, and therefore to be destined for the enemy.

28. The total net imports of a particular commodity by any country in normal times give a satisfactory index to its requirements, and where these are provided for on a generous scale, suitable allowance being made for the commercial dislocation inseparable from a state of war, it is not unfair, after eighteen months of war and in the light of the experience which has now been gained, to invite the Prize Court to regard with suspicion

further consignments of any kind of goods of which the imports have already exceeded a figure ample to satisfy the country's requirements.

29. It ought not to be difficult to arrive at a satisfactory understanding with all parties on the subject, as the official statistics afford information not only as to the quantities of particular commodities required by neutral countries, but also of the sources from which they are usually obtained. Arrangements of this nature will be of great service in removing the friction and misunderstanding which now arise, as it will help the commercial classes in the neutral countries to form an idea of the limits within which their trading operations are not likely to encounter difficulty.

30. The adoption of such a system, although not unattended by difficulty, has been greatly facilitated by agreements made with the organisations which control imports in the neutral countries, as well as by arrangements with some of the shipping lines, and with several of the interests concerned in the import of particular commodities from neutral countries. His Majesty's Government intend to avail themselves of every opportunity which may present itself in order to bring about a more extended adoption of this equitable system.

31. Moreover, the fact that a neutral country adjacent to the enemy territory is importing an abnormal quantity of supplies or commodities, of which her usual imports are relatively small, of which the enemy stands in need, and which are known to pass from that neutral country to the enemy, is by itself an element of proof on which the Prize Court would be justified in acting, unless it is rebutted by evidence to the contrary. Hostile destination being a question of fact, the Court should take all the relevant circumstances into consideration in arriving at its decision, and there seems to be no reason in principle for limiting the facts at which the Court is entitled to look in a case of this kind.

32. The second section of the United States note (paragraphs 16—24) deals with the validity of the measures against enemy commerce which were embodied in the British Order in Council of the 11th March, 1915, and in the French Decree of the 13th March, and maintains that these measures are invalid because they do not comply with the rules which have been gradually evolved in the past for regulating a blockade of enemy ports, and which were summarised in concrete form in articles 1—21 of the Declaration of London.

33. These rules can only be applied to their full extent to a blockade in the sense of the term as used in the Declaration of London. His Majesty's Government have already pointed out that a blockade which was limited to the direct traffic with enemy ports would in this case have but little, if any, effect on enemy commerce, Germany being so placed geographically that her imports and exports can pass through neutral ports of access as easily as through her own. However, with the spirit of the rules His Majesty's Government and their Allies have loyally complied in the measures they have taken to intercept German imports and exports. Due notice has been given by the Allies of the measures they have taken, and goods which were shipped or contracted for before the announcement of the intention of the Allies to detain all commerce on its way to or from the enemy countries have been treated with great liberality. The objects with which the usual declaration and notification of blockade are issued have therefore been fully achieved. Again, the effectiveness of the work of the Allied fleets under the orders referred to is shown by the small number of vessels which escape the Allied patrols. It is doubtful whether there has ever been a blockade where the ships which slipped through bore so small a proportion to those which were intercepted.

34. The measures taken by the Allies are aimed at preventing commodities of any kind from reaching or leaving Germany, and not merely at preventing ships from reaching or leaving German ports. His Majesty's Government do not feel, therefore, that the rules set out in the United States note need be discussed in detail. The basis and the justification of the measures which the Allies have taken were dealt with at length in Sir *E. Grey's* note of the 23rd July, and there is no need to repeat what was there said. It need only be added that the rules applicable to a blockade of enemy ports are strictly followed by the Allies in cases where they apply, as, for instance, in the blockades which have been declared of the Turkish coast of Asia Minor or of the coast-line of German East Africa.

35. Some further comment is perhaps necessary upon the statements made in paragraph 19 of the United States note, where it is said that, because German coasts are open to trade with Scandinavian countries, the measures of the Allies fail to comply with the rule that a blockade must be effective. It is no doubt true that commerce from Sweden and Norway reaches German ports in the Baltic in the same way that commerce still passes to and from Germany across the land frontiers of adjacent States, but this fact does not render the measures which France and Great Britain are taking against German trade the less justifiable. Even if these measures were judged with strict reference to the rules applicable to blockades, a standard by which, in their view, the measures of the Allies ought not to be judged, it must be remembered that the passage of commerce to a blockaded area across a land frontier or across an inland sea has never been held to interfere with the effectiveness of the blockade. If the right to intercept commerce on its way to or from a belligerent country, even though it may enter that country through a neutral port, be granted, it is difficult to see why the interposition of a few miles of sea as well should make any difference. If the doctrine of continuous voyage may rightly be applied to goods going to Germany through Rotterdam, on what ground can it be contended that it is not equally applicable to goods with a similar destination passing through some Swedish port and across the Baltic or even through neutral waters only? In any case, it must be remembered that the number of ships reaching a blockaded area is not the only test as to whether it is maintained effectively. The best proof of the thoroughness of a blockade is to be found in its results. This is the test which Mr. *Seward* in 1863, when Secretary of State, maintained should be applied to the blockade of the Confederate States. Writing to Mr. *Dayton*, the United States Minister in Paris on the 8th March, he said: „But the true test of the efficiency of the blockade will be found in its results. Cotton commands a price in Manchester, and in Rouen and Lowell four times greater than in New Orleans . . . . Judged by this test of results, I am satisfied that there never was a more effective blockade.“ Similar language was used in a despatch to Mr. *Adams* in London. The great rise in price in Germany of many artieles, most necessary to the enemy in the prosecution of the present war, must be well known to the United States Government.

36. Attention is drawn in the same paragraph to the fact that cotton has since the measures announced on the 11th March been declared to be contraband, and this is quoted as an admission that the blockade is ineffective to prevent shipments of cotton from reaching the enemy countries. The reason for which cotton was declared to be contraband is quite simple. Goods with an enemy destination are not, under the Order in Council, subject to condemnation; the yare restored to the owner. Evidence accumulated that it was only for military purposes that cotton was being employed in Germany. All cotton was laid under embargo, and its use in the textile

factories was prohibited except in very special cases or by military permission. In these circumstances it was right and proper that cotton with an enemy destination should be subjected to condemnation and not merely prevented from passing, and it was for this reason that it was declared to be contraband. The amount of cotton reaching the enemy country has probably not been affected in the least by its being made contraband on the 20th August, as supplies from overseas had been cut off effectually before that date. Even the „Konfektionär", a German technical paper dealing with the textile industry, admitted in its issue of the 1st July that not a gramme of cotton had found its way into Germany for the preceding four weeks.

37. Before leaving the question of the validity of the measures which France and Great Britain have taken against enemy commerce, reference must be made to the statement made in the 33rd paragraph of the United States note that „the curtailment of neutral rights by these measures, which are admittedly retaliatory, and therefore illegal . . . cannot be admitted". His Majesty's Government are quite unable to admit the principle that to the extent that these measures are retaliatory, they are illegal. It is true that these measures were occasioned and necessitated by the illegal and unjustifiable proclamation issued by the German Government on the 4th February, 1915, constituting the waters surrounding Great Britain, including the whole English Channel, a „war zone", into which neutral vessels would penetrate at their peril, and in which they were liable to be sunk at sight. This proclamation was accompanied by a memorandum alleging that the violation of international law by Great Britain justified the retaliatory measures of the German Government owing to the acquiescence of neutrals in the action of this country. The legitimacy of the use of retaliatory measures was thus admitted by the Germans, although His Majesty's Government and their Allies strongly deny the facts upon which their arguments were based. But although these measures may have been provoked by the illegal conduct of the enemy, they do not, in reality, conflict with any general principle of international law, of humanity, or civilisation; they are enforced with consideration against neutral countries, and are therefore juridically sound and valid.

38. The more abstract question of the legitimacy of measures of retaliation adopted by one belligerent against his opponent, but affecting neutrals also, is one of which His Majesty's Government think the discussion might well be deferred. It is a subject of considerable difficulty and complexity, but His Majesty's Government are surprised to notice that the Government of the States seem to regard all such measures of retaliation in war as illegal if they should incidentally inflict injury upon neutrals. The advantage which any such principle would give to the determined law-breaker would be so great that His Majesty's Government cannot conceive that it would commend itself to the conscience of mankind. To take a simple instance, suppose that one belligerent scatters mines on the trade routes so as to impede or destroy the commerce of his enemy — an action which is illegitimate and calculated to inflict injury upon neutrals as well as upon the other belligerents — what is that belligerent to do? Is he precluded from meeting in any way this lawless attack upon him by his enemy? His Majesty's Government cannot think that he is not entitled by way of retaliation to scatter mines in his turn, even though in so doing he also interferes with neutral rights. Or take an even more extreme case, suppose that a neutral failed to prevent his territory being made use of by one of the belligerents for warlike purposes, could he object to the other belligerent acting in the same way? It would seem that the true view must be that each belligerent is entitled to insist on being allowed to meet his enemy on

terms of equal liberty of action. If one of them is allowed to make an attack upon the other regardless of neutral rights, his opponent must be allowed similar latitude in prosecuting the struggle, nor should he in that case be limited to the adoption of measures precisely identical with those of his opponent.

39. The third section of the United States note deals with the question of the means of redress which are open to United States citizens for any injury or loss which they suffer as the consequence of an unjustifiable exercise of the belligerent rights of the Allies. The contention put forward in these paragraphs appears to be that there is no obligation on neutral individuals who maintain that they have been damnified by the naval operations of the belligerents to appeal to the Prize Courts for redress, because the Prize Courts are fettered by municipal enactments which are binding upon them, whereas the very question which those individuals wish to raise is the validity of such enactments when tested by the canons of international law.

40. These arguments seem to be founded on a misunderstanding of the situation, and to overlook all that was said in Sir *E. Grey's* note of the 23rd July on this subject. The extract there quoted from the decisions given by Lord *Stowell* shows that in Great Britain the Prize Court has jurisdiction to pronounce a decision on the very point which the United States note indicates, viz., whether an order or instruction to the naval forces issued by His Majesty's Government is inconsistent with those principles of international law which the Court is bound to apply in deciding cases between captors and claimants, and is entitled, if satisfied that the order is not consistent with those principles, to decline to enforce it. The jurisdiction of the Prize Court in Great Britain therefore affords every facility to a United States citizen, whose goods are detained and dealt with under the Order in Council of the 11th March, to take his case to the Prize Court and there claim that the Order under which the naval authorities have acted is invalid, and that its enforcement entitles him to redress and compensation.

41. In some matters, it is true that the Prize Court is bound by the municipal enactments of its own country. It is the territorial sovereign who sets up the Court, and who therefore determines the matters which are incidental to its establishment. His Majesty's Government have already pointed out that each country determines for itself the procedure which its Prize Courts shall adopt; but certainly under the British system — and His Majesty's Government were under the impression that, in this matter, the United States had taken the same course — the substantive law which the Court applies as between captor and claimant consists of the rules and principles of international law, and not the municipal legislation of the country. If reference is made to the case of the case of the „Recovery" (6 C. Rob. 341), it will be seen that Lord *Stowell* refused to enforce in the Prize Court against a neutral the British Navigation Laws.

42. Sir *E. Grey's* note of the 23rd July was intended to make this point clear, and so far from having intended to „give the impression that His Majesty's Government do not rely upon its soundness or strength", His Majesty's Government wish to lay stress on the fact that the principle that no encroachment should be made upon the jurisdiction and the competence of the Prize Court is one which they regard as vital.

43. Apart from the cases where a question may arise as to the validity of orders or instructions on which naval action was based, circumstances frequently give rise to claims for compensation on behalf of individuals who consider they have suffered unjustly from the exercise of rights jure belli,

as, for instance, from the delay in releasing their ships or so forth. His Majesty's Government declare therefore, to repeat what was said in Sir *E. Grey's* note of the 10th February, that the British Prize Court Rules give the court ample jurisdiction to deal with any claims for compensation by a neutral arising from the interference with a ship or goods by the naval forces.

44. His Majesty's Government attach the utmost importance to the maintenance of the rule that, when an effective mode of redress it open to individuals in the courts of a civilised country by which they can obtain adequate satisfaction for any invasion of their rights, recourse must be had to the mode of redress so provided before there is any scope for diplomatic action. This is the course which His Majesty's Government have always themselves endeavoured to follow in previous wars in which Great Britain has been neutral, and they have done so because it is the only principle which is correct in theory and which operates with justice and impartiality between the more powerful and the weaker nations. To that principle His Majesty's Government propose to adhere now that they are themselves the belligerent, and that it is against them that the claims are advanced.

45. Enquiry has been made into the four cases of the „Magicienne“, the „Don José“, the „Labuan“, and the „Saxon“, mentioned in the United States note (paragraph 27) as instances during the American Civil War where His Majesty's Government put forward, through the diplomatic channel, claims for damages for seizure and detention of British ships alleged to have been made without legal justification. In two of these instances it is said that at the time the demands were made the cases were before the American Prize Courts for adjudication. The results of the enquiry are contained in an appendix to this note. The cases have there been dealt with in some detail because they are cited as indicating that it was the practice of Her Majesty's Government during the American Civil War to claim through the diplomatic channel damages for seizures of British ships alleged to have been made without legal justification. The cases do, in fact, establish the very proposition for which His Majesty's Government are now contending, viz., that in cases where the Prize Court has power to grant relief there is no ground for putting forward claims through the diplomatic channel. In two of the cases the United States Government themselves discontinued the Prize Court proceedings and admitted the right to compensation, and in the others they maintained the jurisdiction of the Prize Court, and Her Majesty's Government acquiesced.

46. The statements contained in paragraph 31 of the United States note have led to a careful review of the practice which is now followed in the British Courts with regard to vessels and cargoes which are released. It has been ascertained that in the case of vessels brought in for examination and allowed to proceed without discharging any part of their cargo no dues are charged. Where part of the cargo is discharged and passes into the jurisdiction of the Prize Court, the terms of the release are, of course, subject to the control of the Court, and His Majesty's Government are therefore hardly in a position to give any definite undertaking with regard to the incidence of the expenses and charges which may have been incurred. In general, however, they realise that, in cases where goods are released and it transpires that there were no sufficient grounds for their seizure, no dues or charges should fall upon the owner. The statement that waivers of the right to put forward claims for compensation are exacted as a condition of release is scarcely accurate, but they are prepared to concede that such waivers would be a hardship to the owners of the goods released. In these

circumstances His Majesty's Government will abstain from exacting any such undertakings in future, and will not enforce those which have already been given.

47. Attached to the United States note are voluminous appendices containing lists of various vessels of all nationalities whose cargoes have been examined by the naval forces of the Allies. These lists are a strong testimony to the vigour and effectiveness with which the naval forces are carrying out the measures which the Allies have deemed it necessary to take against the commerce of their enemies. Perhaps the most striking conclusion which can be drawn from these lists is the rapidity with which the vessels are released and the very small amount of loss and inconvenience to which they are, as a rule, exposed.

48. Into the facts of each particular case His Majesty's Government feel sure the Government of the United States will agree that there is no need for them to enter; for the lists comprise only ships dealt with by the British authorities; no corresponding lists are given of those dealt with by the French forces, and a detailed examination of these cases would be of no assistance in explaining the general principles which are being followed and which are common to both the Allies. Furthermore, any discussion of the cases in this note might prejudice the chances of the claimants of recovering compensation through the Prize Court in cases where the consider that they are entitled to redress.

49. Finally His Majesty's Government desire to assure the United States Government that they will continue their efforts to make the exercise of what they conceive to be their belligerent rights as little burdensome to neutrals as possible. Some suggestions have already been referred to in this note which, it is believed, would have that effect, and they are quite ready to consider others. For instance, they have already appointed an impartial and influential commission to examine whether any further steps could be taken to minimise the delays involved in the present methods of dealing with neutral vessels. Again, it has been suggested that it would be a great commercial convenience if neutral shippers knew, before they made arrangements for ship-space and for financing their consignments, whether they would be held up by belligerent patrols. A scheme is already in operation which ought to succeed in accomplishing this object. Other suggestions of a like nature might perhaps be made, and the Allied Governments would be prepared to give favourable consideration to any proposal for the alleviation of the position of neutrals, provided that the substantial effectiveness of the measures now in force against enemy commerce would not be thereby impaired.

50. His Majesty's Government are of opinion that it is to such mitigations that the Allies and the neutrals concerned should look for the removal of the difficulties now encountered rather than to abrupt changes either in the theory or application of a policy based upon admitted principles of international law carefully adjusted to the altered conditions of modern warfare. Some of the changes which have been advocated would, indeed, if adopted in their entirety, render it impossible for the Allies to persist with effect in their endeavours to deprive the enemy of the resources upon which he depends for the prosecution of operations carried on both by land and sea with complete disregard of the claims of humanity; for instance, the practice of visiting exclusively at sea, instead of in port, vessels reasonably suspected of carrying supplies to the enemy, or, again, the adoption of the principle that goods notoriously destined for the enemy may not be intercepted if they happen to be carried by a neutral vessel and addressed to a neutral consignee, could not fail to have this result.

51. His Majesty's Government have noted with sincere satisfaction the intimation contained in the concluding passages of the United States note, of the intention of the United States to undertake the task of championing the integrity of neutral rights. The first act of this war was the unprovoked invasion by the enemy of neutral territory — that of Belgium — which he was solemnly pledged by treaty to protect: the occupation of this territory was accompanied by abominable acts of cruelty and oppression in violation of all the accepted rules of war, atrocities the record of which is available in published documents; the disregard of neutral rights has since been extended to naval warfare by the wanton destruction of neutral merchant ships on the high seas, regardless of the lives of those on board. In every theatre and in each phase of the war has been visible the same shocking disregard by the enemy of the rights of innocent persons and neutral peoples. His Majesty's Government would welcome any combination of neutral nations under the lead of the United States which would exert an effective influence to prevent the violation of neutral rights, and they cannot believe that they or their Allies have much to fear from any combination for the protection of those rights which takes an impartial and comprehensive view of the conduct of this war, and judges it by a reasonable interpretation of the generally accepted provisions of international law and by the rules of humanity that have hitherto been approved by the civilised world.

April 24th, 1916.

Appendix.

Cases of the „Magicienne", the „Don José", the „Labuan", and the „Saxon".

1. The „Magicienne" was captured on the 27th January, 1863, about 400 miles from the Cape Verde Islands while on a voyage to Matamoras. She was taken to Key West and released on the 2nd March, the District Attorney of the United States stating that he could see nothing in the depositions, invoices, and other papers on which to base a demand for condemnation, or even for a certificate of probable cause of seizure. On the 3rd April Lord *Lyons* was instructed to ask for compensation, and did so in a note to Mr. *Seward*, dated the 22nd April. In reply, Mr. *Seward* admitted that compensation ought to be made. The course of procedure suggested by Mr. *Seward* was adopted, and ultimately the compensation was fixed at 8,645 dollars. No suggestion was made that any other mode of redress was open to the injured party, or that it was not a case where compensation should be asked for through the diplomatic channel. On the contrary, the admission that the seizure was illegal was made by the United States, and Mr. *Seward* himself admitted that compensation should be made.

2. The „Don José" was a small British schooner of 35 tons, which was captured on the 2nd July, 1863, off Cuba when on a voyage to Havana. She was released on the 15th July because the District Attorney was unable on examination of the ship's papers and of the depositions of the witnesses to find any grounds on which to file a libel against the vessel. On the 2nd January, 1864, Lord *Lyons* wrote a note to Mr. *Seward*, pointing out that the seizure appeared to have been one of a very unjustifiable character, and saying that he hoped that the United States Government would have no difficulty in admitting that compensation was due. Mr. *Seward*, in his reply, admitted that the case seemed to be a strong one. On the 18th May Lord *Lyons* again pressed for compensation and based his claim upon the ground that the United States Law Officer could find no ground for bringing the case before the Prize Court, and that it must be presumed

that the Court, if the case had come before it, would, in the execution of its duty, have awarded costs and damages. Mr. *Seward* promised o give the matter attentive consideration. He does not appear to havet suggested that the claiment could himself have applied to the Prize Court for compensation, or to have challenged the point urged by Lord *Lyons* that it was the failure of the United States authorities to bring the case before the Prize Court which deprived the Court of the opportunity of awarding redress.

3. The case of the „Labuan" gave rise to a voluminous diplomatic correspondence. She was a British steamer which was seized by the United States steamer „Portsmouth" on the 1st February, 1862, when lying off the mouth of the Rio Grande within the limits of the port of Matamoros and probably therefore within the territorial waters of Mexico. She had landed a cargo of British goods and was loading a cargo of cotton and other articles. Copies of the reports which Lord *Lyons* had received as to this case were given to Mr. *Seward* privately with a suggestion that the United States Government might perhaps think it advisable to release the vessel and give her compensation without subjecting the vessel to judicial proceedings. In another unofficial communication Mr. *Seward* admitted that a perusal of the information in the Navy Department had not satisfied him that the capture was legal, but preferred that nothing should be done until a judicial decision had been given. The official correspondence that ensued dealt mainly in its earlier stages with the contention urged by Her Majesty's Government that unless the United States Government were going to maintain that the capture was justifiable and valid, it was unreasonable to expose the parties interested to the delay and the expense of judicial proceedings. The United States Government however insisted that the case must take its course in the Prize Court, and in the circumstances Her Majesty's Government could only acquiesce. The trial took place on the 20th May in the District Court at New York, when the immediate release of vessel and cargo was ordered, and the question of damages against the captors reserved for consideration. The subsequent official correspondence was occupied chiefly with the delays in getting the damages assessed. As early as the 9th April, 1863, Mr. *Seward* wrote to Lord *Lyons* a note reviewing the whole correspondence, in which he said „I freely admit that I believe the claimants entitled to damages and cost", but he maintained that it was regular and legal to wait for the Court to decree them, and that the Court would decide the question with more exact justice than could the Executive Government. The period which elapsed before the Prize Court dealt with the damages payable certainly justified the complaints which Lord *Lyons* was instructed to make, for the decree awarding 141902 dollars was not issued until March 1868, more than six years after the capture, nor was the sum paid until a further period of over two years had elapsed.

4. The case of the „Saxon" also gave rise to a voluminous diplomatic correspondence, but I am at a loss to know what ground there can be for citing the action of Her Majesty's Government in this case as a precedent for maintaining the right of a Government to ignore the Prize Court and to claim compensation through the diplomatic channel. The „Saxon" was seized on the 29th October, 1863, by the United States ship „Vanderbilt" while lying at anchor off Penguin Island, on the coast of South Africa. Some confusion occurred at the time of capture, and the mate of the „Saxon" was shot dead by an officer of the „Vanderbilt". The vessel was sent to New York, and arrived there on the 22nd December. Some doubt seems to have arisen as to why the vessel had been captured, and Lord *Lyons* was instructed by Lord *Russell* early in 1864 to ask the United States Government either to direct the immediate release of the „Saxon", with proper

compensation to the owners, or at least to explain the ground on which her seizure and detention were supposed to be justified. Meanwhile further information had come into the possession of Her Majesty's Government, and on the 15th February Lord *Lyons* was instructed, on the advice of the Law Officers of the Crown, that Her Majesty's Government saw no ground for seeking to withdraw the case from the jurisdiction of the Prize Court. On the 7th March Judge Betts, in the District Court at New York, decreed the restitution of the vessel and cargo free of all costs, charges, and expenses, reserving for future consideration the question of probable cause of seizure. Lord *Lyons* was subsequently informed that Her Majesty's Government saw no reason to complain of this sentence. They understood the question of damages still to be open, but they were not prepared to say that, if these should be refused, they would, in the peculiar circumstances of the case, be any necessity for an official complaint on their part. The only suggestion which Her Majesty's Government made through the diplomatic channel as to payment of compensation was a request that some relief might be granted to the widow of the „Saxon“ who was shot by an officer of the „Vanderbilt“, but the request was refused with asperity.

Nr. 2005. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin, 4. Mai 1916.

(**A. A. U.***) Nr. 27.)

Berlin, den 4. Mai 1916.

Der Unterzeichnete beehrt sich, im Namen der kaiserlich deutschen Regierung Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, Herrn *James W. Gerard*, auf das Schreiben vom 20. v. M. über die Führung des deutschen Unterseebootkrieges nachstehendes zu erwidern:

Die deutsche Regierung hat das ihr von der Regierung der Vereinigten Staaten in Sachen der „Sussex“ mitgeteilte Material an die beteiligten Marinestellen zur Prüfung weitergegeben. Auf Grund des bisherigen Ergebnisses dieser Prüfung verschließt sie sich nicht der Möglichkeit, daß das in ihrer Note vom 10. v. M. erwähnte, von einem deutschen Unterseeboot torpedierte Schiff in der Tat mit der „Sussex“ identisch ist. Die deutsche Regierung darf sich eine weitere Mitteilung hierüber vorbehalten, bis einige noch ausstehende, für die Beurteilung des Sachverhalts ausschlaggebende Feststellungen erfolgt sind. Falls es sich erweisen sollte, daß die Annahme des Kommandanten, ein Kriegsschiff vor sich zu haben, irrig war, so wird die deutsche Regierung die sich hieraus ergebenden Folgerungen ziehen.

Die Regierung der Vereinigten Staaten hat an den Fall der „Sussex“ eine Reihe von Behauptungen geknüpft, die in dem Satze gipfeln, daß dieser Fall nur ein Beispiel für die vorbedachte Methode unterschiedsloser Zerstörung von Schiffen aller Art, Nationalität und Bestimmung durch die Befehlshaber der deutschen Unterseeboote sei. Die deutsche Regierung muß diese Behauptung mit Entschiedenheit zurückweisen. Auf eine ins einzelne gehende Zurückweisung glaubt sie indessen im gegenwärtigen Stadium der Angelegenheit verzichten zu sollen, zumal da die amerikanische Regierung es unterlassen hat, ihre Behauptung durch konkrete Angaben zu begründen. Die deutsche Regierung begnügt sich mit der Feststellung, daß sie, und zwar lediglich mit Rücksicht auf die Interessen der Neutralen, in dem Gebrauch der Unterseebootwaffe sich weitgehende Beschränkungen auferlegt hat, obwohl

*) S. auch **E. W. 3,** S. 302—306. Herausgeber.

diese Beschränkungen notwendigerweise auch den Feinden Deutschlands zugute kommen, — eine Rücksicht, der die Neutralen bei England und seinen Verbündeten nicht begegnet sind.

In der Tat sind die deutschen Seestreitkräfte angewiesen, den Unterseebootkrieg nach den allgemeinen völkerrechtlichen Grundsätzen über die Anhaltung, Durchsuchung und Zerstörung von Handelsschiffen zu führen, mit der einzigen Ausnahme des Handelskrieges gegen die im englischen Kriegsgebiet betroffenen feindlichen Frachtschiffe, derentwegen der Regierung der Vereinigten Staaten niemals, auch nicht durch die Erklärung vom 8. Februar d. J., eine Zusicherung gegeben worden ist. Einen Zweifel daran, daß die entsprechenden Befehle loyal gegeben worden sind und loyal ausgeführt werden, kann die deutsche Regierung niemandem gestatten. Irrtümer, wie sie tatsächlich vorgekommen sind, lassen sich bei keiner Art der Kriegführung ganz vermeiden und sind in dem Seekrieg gegen einen Feind, der sich aller erlaubten und unerlaubten Listen bedient, erklärlich. Aber auch abgesehen von Irrtümern birgt der Seekrieg genau wie der Landkrieg für neutrale Personen und Güter, die in den Bereich der Kämpfe gelangen, unvermeidliche Gefahren in sich. Selbst in Fällen, in denen die Kampfhandlung sich lediglich in den Formen des Kreuzerkrieges abgespielt hat, sind wiederholt neutrale Personen und Güter zu Schaden gekommen. Auf die Minengefahr, der zahlreiche Schiffe zum Opfer gefallen sind, hat die deutsche Regierung wiederholt aufmerksam gemacht.

Die deutsche Regierung hat der Regierung der Vereinigten Staaten mehrfach Vorschläge gemacht, die bestimmt waren, die unvermeidlichen Gefahren des Seekriegs für amerikanische Reisende und Güter auf ein Mindestmaß zurückzuführen. Leider hat die Regierung der Vereinigten Staaten nicht geglaubt, auf diese Vorschläge eingehen zu sollen; anderenfalls würde sie dazu beigetragen haben, einen großen Teil der Unfälle zu verhindern, von denen inzwischen amerikanische Staatsangehörige betroffen worden sind. Die deutsche Regierung hält auch heute noch an ihrem Angebot fest, Vereinbarungen in dieser Richtung zu treffen.

Entsprechend den wiederholt von ihr abgegebenen Erklärungen kann die deutsche Regierung auf den Gebrauch der Unterseebootwaffe auch im Handelskrieg nicht verzichten. Wenn sie sich heute in der Anpassung der Methoden des Unterseebootkriegs an die Interessen der Neutralen zu einem weiteren Entgegenkommen entschließt, so sind für sie Gründe bestimmend, die sich über die Bedeutung der vorliegenden Streitfrage erheben.

Die deutsche Regierung mißt den hohen Geboten der Menschlichkeit keine geringere Bedeutung bei als die Regierung der Vereinigten Staaten. Sie trägt auch voll Rechnung der langen gemeinschaftlichen Arbeit der beiden Regierungen an einer von diesen Geboten geleiteten Ausgestaltung des Völkerrechts, deren Ziel stets die Beschränkung des Land- und Seekriegs auf die bewaffnete Macht der Kriegführenden und die tunlichste Sicherung der Nichtkämpfenden gegen die Grausamkeiten des Krieges gewesen ist.

Für sich allein würden jedoch diese Gesichtspunkte, so bedeutsam sie sind, für die deutsche Regierung bei dem gegenwärtigen Stand der Dinge nicht den Ausschlag geben können.

Denn gegenüber dem Appell der Regierung der Vereinigten Staaten an die geheiligten Grundsätze der Menschlichkeit und des Völkerrechts muß die deutsche Regierung erneut und mit allem Nachdruck feststellen, daß es nicht die deutsche, sondern die britische Regierung gewesen ist, die diesen furchtbaren Krieg unter Mißachtung aller zwischen den Völkern vereinbarten Rechtsnormen auf Leben und Eigentum der Nichtkämpfer ausgedehnt hat, und zwar ohne jede Rücksicht auf die durch diese Art der Kriegführung schwer geschädigten Interessen und Rechte der Neutralen und Nichtkämpfen-

den. In der bittersten Notwehr gegen die rechtswidrige Kriegführung Englands, im Kampf um das Dasein des deutschen Volkes hat die deutsche Kriegführung zu dem harten, aber wirksamen Mittel des Unterseebootkrieges greifen müssen. Bei dieser Sachlage kann die deutsche Regierung nur erneut ihr Bedauern darüber aussprechen, daß die humanitären Gefühle der amerikanischen Regierung, die sich mit so großer Wärme den bedauernswerten Opfern des Unterseebootkrieges zuwenden, sich nicht mit der gleichen Wärme auch auf die vielen Millionen von Frauen und Kindern erstrecken, die nach der erklärten Absicht der englischen Regierung in den Hunger getrieben werden und durch ihre Hungerqualen die siegreichen Armeen der Zentralmächte zu schimpflicher Kapitulation zwingen sollen. Die deutsche Regierung und mit ihr das deutsche Volk hat für dieses ungleiche Empfinden um so weniger Verständnis, als sie zu wiederholten Malen sich ausdrücklich bereit erklärt hat, sich mit der Anwendung der Unterseebootwaffe streng an die vor dem Krieg anerkannten völkerrechtlichen Normen zu halten, falls England sich dazu bereit findet, diese Normen gleichfalls seiner Kriegführung zugrunde zu legen. Die verschiedenen Versuche der Regierung der Vereinigten Staaten, die großbritannische Regierung hierzu zu bestimmen, sind an der strikten Ablehnung der britischen Regierung gescheitert. England hat auch weiterhin Völkerrechtsbruch auf Völkerrechtsbruch gehäuft und in der Vergewaltigung der Neutralen jede Grenze überschritten. Seine letzte Maßnahme, die Erklärung deutscher Bunkerkohle als Bannware, verbunden mit den Bedingungen, zu denen allein englische Bunkerkohle an die Neutralen abgegeben wird, bedeutet nichts anderes als den Versuch, die Tonnage der Neutralen durch unerhörte Erpressung unmittelbar in den Dienst des englischen Wirtschaftskrieges zu zwingen.

Das deutsche Volk weiß, daß es in der Hand der Regierung der Vereinigten Staaten liegt, den Krieg im Sinne der Menschlichkeit und des Völkerrechts auf die Streitkräfte der kämpfenden Staaten zu beschränken. Die amerikanische Regierung wäre dieses Erfolges sicher gewesen, wenn sie sich entschlossen hätte, ihre unbestreitbaren Rechte auf die Freiheit der Meere England gegenüber nachdrücklich geltend zu machen. So aber steht das deutsche Volk unter dem Eindruck, daß die Regierung der Vereinigten Staaten von Deutschland in dessen Existenzkampf die Beschränkung im Gebrauch einer wirksamen Waffe verlangt, und daß sie die Aufrechterhaltung ihrer Beziehungen zu Deutschland von der Erfüllung dieser Forderung abhängig macht, während sie sich gegenüber den völkerrechtswidrigen Methoden seiner Feinde mit Protesten begnügt. Auch ist dem deutschen Volke bekannt, in wie weitem Umfang unsere Feinde aus den Vereinigten Staaten mit Kriegsmitteln aller Art versehen werden.

Unter diesen Umständen wird es verstanden werden, daß die Anrufung des Völkerrechts und der Gefühle der Menschlichkeit im deutschen Volke nicht den vollen Widerhall finden kann, dessen ein solcher Appell hier unter anderen Verhältnissen stets sicher ist.

Wenn die deutsche Regierung sich trotzdem zu einem äußersten Zugeständnis entschließt, so ist für sie entscheidend einmal die mehr als hundertjährige Freundschaft zwischen den beiden großen Völkern, sodann aber der Gedanke an das schwere Verhängnis, mit dem eine Ausdehnung und Verlängerung dieses grausamen und blutigen Krieges die gesamte zivilisierte Menschheit bedroht.

Das Bewußtsein der Stärke hat es der deutschen Regierung erlaubt, zweimal im Laufe der letzten Monate ihre Bereitschaft zu einem Deutschlands Lebensinteressen sichernden Frieden offen und vor aller Welt zu bekunden. Sie hat damit zum Ausdruck gebracht, daß es nicht an ihr liegt, wenn den Völkern Europas der Friede noch länger vorenthalten bleibt. Mit

um so stärkerer Berechtigung darf die deutsche Regierung aussprechen, daß es vor der Menschheit und der Geschichte nicht zu verantworten wäre, nach 21 monatiger Kriegsdauer die über den Unterseebootkrieg entstandene Streitfrage eine den Frieden zwischen dem deutschen und dem amerikanischen Volke ernstlich bedrohende Wendung nehmen zu lassen.

Einer solchen Entwicklung will die deutsche Regierung, soweit es an ihr liegt, vorbeugen. Sie will gleichzeitig ein letztes dazu beitragen, um — solange der Krieg noch dauert — die Beschränkung der Kriegführung auf die kämpfenden Streitkräfte zu ermöglichen, ein Ziel, das die Freiheit der Meere einschließt und in dem sich die deutsche Regierung mit der Regierung der Vereinigten Staaten auch heute noch einig glaubt.

Von diesem Gedanken geleitet, teilt die deutsche Regierung der Regierung der Vereinigten Staaten mit, daß Weisung an die deutschen Seestreitkräfte ergangen ist, in Beobachtung der allgemeinen völkerrechtlichen Grundsätze über Anhaltung, Durchsuchung und Zerstörung von Handelsschiffen auch innerhalb des Seekriegsgebiets Kauffahrteischiffe nicht ohne Warnung und Rettung der Menschenleben zu versenken, es sei denn, daß sie fliehen oder Widerstand leisten.

In dem Daseinskampf, den Deutschland zu führen gezwungen ist, kann ihm jedoch von den Neutralen nicht zugemutet werden, sich mit Rücksicht auf ihre Interessen im Gebrauch einer wirksamen Waffe Beschränkungen aufzuerlegen, wenn seinen Gegnern gestattet bleibt, ihrerseits völkerrechtswidrige Mittel nach Belieben zur Anwendung zu bringen. Ein solches Verlangen würde mit dem Wesen der Neutralität unvereinbar sein. Die deutsche Regierung ist überzeugt, daß der Regierung der Vereinigten Staaten eine derartige Zumutung fernliegt; dies entnimmt sie aus der wiederholten Erklärung der amerikanischen Regierung, daß sie allen Kriegführenden gegenüber die verletzte Freiheit der Meere wiederherzustellen entschlossen sei.

Die deutsche Regierung geht demgemäß von der Erwartung aus, daß ihre neue Weisung an die Seestreitkräfte auch in den Augen der Regierung der Vereinigten Staaten jedes Hindernis für die Verwirklichung der in der Note vom 23. Juli 1915 angebotenen Zusammenarbeit zu der noch während des Krieges zu bewirkenden Wiederherstellung der Freiheit der Meere aus dem Wege räumt, und sie zweifelt nicht daran, daß die Regierung der Vereinigten Staaten nunmehr bei der großbritannischen Regierung die alsbaldige Beobachtung derjenigen völkerrechtlichen Normen mit allem Nachdruck verlangen und durchsetzen wird, die vor dem Kriege allgemein anerkannt waren und die insbesondere in den Noten der amerikanischen Regierung an die britische Regierung vom 28. Dezember 1914 und vom 5. November 1915 dargelegt sind. Sollten die Schritte der Regierung der Vereinigten Staaten nicht zu dem gewollten Erfolge führen, den Gesetzen der Menschlichkeit bei allen kriegführenden Nationen Geltung zu verschaffen, so würde die deutsche Regierung sich einer neuen Sachlage gegenübersehen, für die sie sich die volle Freiheit der Entschließung vorbehalten muß.

Der Unterzeichnete benutzt auch diesen Anlaß, um dem Herrn Botschafter die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *von Jagow.*

Seiner Exzellenz dem Botschafter
der Vereinigten Staaten von Amerika Herrn *James W. Gerard.*

Nr. 2006. Der amerikanische Botschafter in Berlin an den Staatssekretär des Auswärtigen Amts, 10. Mai 1916.

(**A. A. U.***) Nr. 28.)

Berlin, May 10, 1916.

Your Excellency,

I have the honor, by instructions of my Government, to communicate to Your Excellency the following reply to the Note of Your Excellency, dated May 4, 1916.

The Note of the Imperial Government under date of May fourth nineteen sixteen has received careful consideration by the Government of the United States. It is especially noted as indicating the purpose of the Imperial Government as to the future that it „is prepared to do its utmost to confine the operations of the war for the rest of its duration to the fighting forces of the belligerents“ and that it is determined to impose upon all its commanders at sea the limitations of the recognized rules of international law upon which the Government of the United States has insisted throughout the months which have elapsed since the Imperial Government announced on February 4 nineteen fifteen its submarine policy now happily abandoned. The Government of the United States has been constantly guided and restrained by motives of friendship in its patient efforts to bring to an amicable settlement the critical questions arising from that policy which has so seriously menaced the good relations between the two countries. The Government of the United States will rely upon a scrupulous execution henceforth of the now altered policy of the Imperial Government such as will remove the principal danger of an interruption of the good relations existing between the United States and Germany. The Government of the United States feels necessary to state that it takes it for granted that the Imperial Government does not intend to imply that the maintenance of its newly announced policy is in any way contingent upon the course or result of diplomatic negotiations between the Government of the United States and any other belligerent government notwithstanding the fact that certain passages in the Imperial Government's Note of the fourth instant might appear to be susceptible of the construction. In order however to avoid any possible misunderstanding the Government of the United States notifies the Imperial Government that it cannot for a moment entertain, much less discuss, a suggestion that respect by German Naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other government affecting the rights of neutrals and noncombatants. Responsibility in such matters is single, not joint, absolute, not relative.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *von Jagow,*
Imperial Secretary of State for Foreign Affairs, etc., etc., etc.

Nr. 2007. Amerikanische Protestnote vom 28. Juli 1916 an England gegen die Schwarzen Listen. (The Times, London, vom 31. Juli 1916, Nr. 41233.)

The announcement that his Britannic Majesty's Government has placed the names of certain persons, firms, and corporation in the United States

*) S. auch **E. W. 3,** S. 306—307. Herausgeber.

upon a proscriptive black list, and has forbidden all financial or commercial dealings between them and citizens of Great Britain, has been received with the most painful surprise by the people, the Government of the United States, and seems to the Government of the United States to embody a policy of arbitrary interference with neutral trade against which it is its duty to protest in the most decided terms.

The scope and effect of the policy are extraordinary. British steamship companies will not accept cargoes from the proscribed firms or persons or transport their goods to any port, and steamship lines, if it is true, of neutal ownership, understand that if they accept freight from them, they are likely to be denied coal at British ports and excluded from other privileges which they have usually enjoved and may themselves be put upon the black list, Neutral bankers refuse loans to those on the list and neutral merchants decline to contract for their goods, fearing a like proscription.

It appears that British officials regard the prohibitions of the black list as applicable to domestic commercial transaction in foreign countries, as well as in Great Britain and her dependencies, for Americans doing business in foreign countries have been put on notice that their dealings with black-listed firms are to be regarded as subject to veto by the British Government. By the same principle Americans in the United States might be made subject to similar punitive action if they were found dealing with any of their own countrymen whose names had thus been listed.

The harsh, even disastrous, effects of this policy upon the trade of the United States and upon the neutral rigths upon which it will not fail to insist are obvious. Upon the list of those proscribed and in effect shut out from the general commerce of the world may be found American concerns which are engaged in large commercial operations as importers of foreign products and materials and as distributors of American products and manufactures to foreign countries, and which constitute important channels through which American trade reaches the outside world. Their foreign affliations may have been fostered for many years, and when once broken cannot easily or promptiv be re-established. Other concerns may be put upon the list at any time and without notice. It is understood that additions to the proscription may be made „whenever on account of enemy nationality or enemy association of such persons or bodies of persons, it appears to his Majesty expedient to do so“. The possibilities of undeserved injury to American citizens from such measures arbitrarily taken and of serious and incalculable interruptions of American trade are without limit.

It has been stated on behalf of his Majesty's Government that these measures were aimed only at the enemies of Great Britain. and would be adopted and enforced with strict regard to the rights of neutrals, and with the least possible detriment to neutral trade, but it is evident that they are inevitably and essentially inconsistent with the rights of the citizens of all nations not involved in war.

The Government of the United States begs to remind the Government of his Britannic Majesty that citizens of the United States are entirely within their rights in attempting to trade with people or the Governments of any of the nations now at war, subject only to well-defined international practices and understandings, which the Government of the United States deem the Government of Great Britain to have too lightly and too frequently disregarded. There are well-known remedies and penalties for breaches of blockade, where the blockade is real and in fact effective, for trade in contraband, for every unneutral act by whomsoever attempted. The Government of the United States cannot consent to see these remedies and penalties

altered or extended at the will of a Power or group of Powers to the injury of its own citizens, or in derogation of its own rights. Conspicuous among the principles which the civilized nations of the world have accepted for the safeguarding of the rights of neutrals is the just and honourable principle that neutrals may not be condemned nor their goods confiscated, except upon fair adjudication and after an opportunity to be heard in Prize Courts or elsewhere. Such safeguards the black list brushes aside. It condemns without hearing, without notice, and in advance. It is manifestly out of the question that the Government of the United States should acquiesce in such methods or applications of punishment to its citizens.

Whatever may be said with regard to the legality in the view of international obligation of the Act of Parliament upon which the practice of the black list, as now employed by his Majesty's Government, is understood to be based, the Government of the United States is constrained to regard that practice as inconsistent with that true justice, sincere amity, impartial fairness, which should characterize the dealings of friendly Governments with one another.

The spirit of reciprocal trade between the United States and Great Britain, the privilege long accorded to the nationals of each to come and go with their shipsand cargoes, to use each other's shipping, and be served each by the other's merchants, is very seriously impaired by arbitrary and sweeping practices such as this. There is no purpose or inclination on the part of the Government of the United States to shield American citizens or business houses in any way from the legitimate consequences of unneutral acts or practices; it is quite willing that they should suffer the appropriate penalties which international law and the usage of nations have sanctioned.

But his Britannic Majesty's Government cannot expect the Government of the United States to consent to see its citizens put upon an ex parte black list without calling the attention of his Majesty's Government in the gravest terms to the many serious consequenzes to neutral right and neutral relations, which such an act must necessarily involve. It hopes and believes that his Majesty's Government in its natural absorption in a single pressing object of policy has acted without a full realization of the many undesired and undesirable results that might ensue.

Nr. 2008. Der amerikanische Geschäftsträger in Berlin an das Auswärtige Amt, 21. Dezember 1916.

(**A. A. D. S.***) Nr. 3.)

Embassy of the United States of America.
Berlin, December 21, 1916.

Your Excellency,

I have the honor to inform Your Excellency that the President of the United States has instructed me to suggest to the Imperial German Government, through Your Excellency, a course of action with regard to the present war which he hopes that the Imperial German Government will take under

*) **Deutsches Weißbuch:**
Auswärtiges Amt. Diplomatische Schriftstücke aus der Zeit vom 12. Dezember 1916 bis zum 19. März 1917.
(Angeführt als **A. A. D. S.**)
Herausgeber.

consideration as suggested in the most friendly spirit and as coming not only from a friend but also as coming from the representative of a neutral nation whose interests have been most seriously affected by the war and whose concern for its early conclusion arises out of a manifest necessity to determine how best to safeguard those interests if the war is to continue.

The suggestion which I am instructed to make, the President has long had it in mind to offer. He is somewhat embarrassed to offer it at this particular time because it may now seem to have been prompted by a desire to play a part in connection with the recent overtures of the Central Powers. It has in fact been in no way suggested by them in its origin and the President would have delayed offering it until those overtures had been independently answered but for the fact that it also concerns the question of peace and may best be considered in connection with other proposals which have the same end in view. The President can only beg that his suggestion be considered entirely on its own merits and as if it had been made in other circumstances.

The President suggests that an early occassion be sought to call out from all the nations now at war such an avowal of their respective views as to the terms upon which the war might be concluded and the arrangements which would be deemed satisfactory as a guarantee against its renewal or the kindling of any similar conflict in the future as would make it possible frankly to compare them. He is indifferent as to the means taken to accomplish this. He would be happy himself to serve or even to take the initiative in its accomplishment in any way that might prove acceptable, but he has no desire to determine the method or the instrumentality. One way will be as acceptable to him as another if only the great object he has in mind be attained.

He takes the liberty of calling attention to the fact that the objects which the statesmen of the belligerents on both sides have in mind in this war are virtually the same, as stated in general terms to their own people and to the world. Each side desires to make the rights and privileges of weak peoples and small states as secure against oppression or denial in the future as the rights and privileges of the great and powerful states now at war. Each wishes itself to be made secure in the future, along with all other nations and peoples, against the recurrence of wars like this, and against aggression or selfish interference of any kind. Each would be jealous of the formation of any more rival leagues to preserve an uncertain balance of power amidst multiplying suspicions; but each is ready to consider the formation of a league of nations to insure peace and justice throughout the world. Before that final step can be taken, however, each deems it necessary first to settle the issues of the present war upon terms which will certainly safeguard the independence, the territorial integrity, and the political and commercial freedom of the nations involved.

In the measures to be taken to secure the future peace of the world the people and the Government of the United States are as vitally and as directly interested as the Government now at war. Their interest, moreover, in the means to be adopted to relieve the smaller and weaker peoples of the world of the peril of wrong and violence is as quick and ardent as that of any other people or government. They stand ready, and even eager, to cooperate in the accomplishment of these ends when the war is over with every influence and resource at their command. But the war must first be concluded. The terms upon which it is to be concluded they are not at liberty to suggest; but the President does feel that it is his right and his duty to point out their intimate interest in its conclusion, lest it should

presently be too late to accomplish the greater things which lie beyond its conclusion, lest the situation of neutral nations, now exceedingly hard to endure, be rendered altogether intolerable, and lest, more than all, an injury be done civilization itself which can never be atoned for or repaired.

The President, therefore, feels altogether justified in suggesting an immediate opportunity for a comparison of views as to the terms which must precede those ultimate arrangements for the peace of the world which all desire and in which the neutral nations as well as those at war are ready to play their full responsible part. If the contest must continue to proceed towards undefined ends by slow attrition until the one group of belligerents or the other is exhausted, if million after million of human lives must continue to be offered up until on the one side or the other there are no more to offer, if resentments must be kindled that can never cool and despairs engendered from which there can be no recovery, hopes of peace and of the willing concert of free peoples will be rendered vain and idle.

The life of the entire world has been profoundly affected. Every part of the great family of mankind has felt the burden and terror of this unprecedented contest of arms. No nation in the civilized world can be said in truth to stand outside its influence or to be safe against its disturbing effects. Yet the concrete objects for which it is being waged have never been definitely stated.

The leaders of the several belligerents have, as has been said, stated those objects in general terms. But, stated in general terms, they seem the same on both sides. Never yet have the authoritative spokesmen of either side avowed the precise objects which would, if attained, satisfy them and their people that the war had been fought out. The world has been left to conjecture what definite results, what actual exchange of guarantees, what political or territorial changes or readjustments, what stage of military success even, would bring the war to an end.

It may be that peace is nearer than we know; that the terms which the belligerents on the one side and on the other would deem it necessary to insist upon are not so irreconcilable as some have feared; that an interchange of views would clear the way at least for conference and make the permanent concord of the nations a hope of the immediate future, a concert of nations immediately practicable.

The President is not proposing peace; he is not even offering mediation. He is merely proposing that soundings be taken in order that we may learn, the neutral nations with the belligerents, how near the haven of peace may be for which all mankind longs with an intense and increasing longing. He believes that the spirit in which he speaks and the objects which he seeks will be understood by all concerned, and he confidently hopes for a response which will bring a new light into the affairs of the world.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration. gez. *Grew.*

His Excellency Mr. *Zimmermann*,
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 2009. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin, 26. Dezember 1916.

(**A. A. D. S.** Nr. 5.)

Berlin, den 26. Dezember 1916.

Der Unterzeichnete beehrt sich, Seiner Exzellenz dem Botschafter der Vereinigten Staaten von Amerika, *The Honorable James W. Gerard*, auf das geschätzte Schreiben vom 21. d. M. folgendes zu erwidern:

Die kaiserliche Regierung hat die hochherzige Anregung des Herrn Präsidenten der Vereinigten Staaten von Amerika, Grundlagen für die Herstellung eines dauernden Friedens zu schaffen, in dem freundschaftlichen Geiste aufgenommen und erwogen, der in der Mitteilung des Herrn Präsidenten zum Ausdruck kommt. Der Herr Präsident zeigt das Ziel, das ihm am Herzen liegt, und läßt die Wahl des Weges offen. Der kaiserlichen Regierung erscheint ein unmittelbarer Gedankenaustausch als der geeignetste Weg, um zu dem gewünschten Ergebnis zu gelangen. Sie beehrt sich daher, im Sinne ihrer Erklärung vom 12. d. M., die zu Friedensverhandlungen die Hand bot, den alsbaldigen Zusammentritt von Delegierten der kriegführenden Staaten an einem neutralen Orte vorzuschlagen.

Auch die kaiserliche Regierung ist der Ansicht, daß das große Werk der Verhütung künftiger Kriege erst nach Beendigung des gegenwärtigen Völkerringens in Angriff genommen werden kann. Sie wird, wenn dieser Zeitpunkt gekommen ist, mit Freuden bereit sein, zusammen mit den Vereinigten Staaten von Amerika an dieser erhabenen Aufgabe mitzuarbeiten.

Indem der Unterzeichnete für die Uebermittelung der vorstehenden Antwort an den Herrn Präsidenten der Vereinigten Staaten von Amerika die Mühewaltung des Botschafters der Vereinigten Staaten von Amerika, *The Honorable James W. Gerard,* in Anspruch zu nehmen sich gestattet, benutzt er diesen Anlaß, um die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *Zimmermann.*

An den Botschafter der Vereinigten Staaten von Amerika,
The Honorable James W. Gerard, Berlin.

Nr. 2010. Der amerikanische Botschafter in Berlin an das Auswärtige Amt, 22. Januar 1917.

(**A. A. D. S.** Nr. 15.)

Embassy of the United States of America.
Berlin, January 22, 1917.

Your Excellency,

Under instructions from my Government I have the honor to transcribe, for the information of the Imperial Government, a message which the President of the United States is today delivering before the Congress of the United States in Washington:

„Gentlemen of the Senate:

On the 18th of December last I addressed an identic Note to the Governments of the nations now at war requesting them to state, more definitely than they had yet been stated be either group of belligerents, the terms upon which they would deem it possible to make peace. I spoke on behalf of humanity and of the rights of all neutral nations like our own, many of whose most vital interests the war puts in constant jeopardy. The Central Powers responded in a reply which stated merely that they were ready to meet their antagoniste in conference to discuss terms of peace. The Entente Powers have replied much more definitely and have stated, in general terms, indeed, but with sufficient definiteness to imply details, the arrangements, guaranties, and acts of reparation which they deem to be the indispensable conditions of a satisfactory settlement. We are that much nearer a definite discussion of the peace which shall end the present war. We are that much nearer the discussion of the international concert which

must thereafter hold the world at pledges. In every discussion .of the peace that must end this war it is taken for granted that that peace must be followed by some definite concert of power which will make it virtually impossible that any such catastrophe should ever overwhelm us again. Every lover of mankind, every sane and thoughtful man must take that for granted.

I have sought this opportunity to address you because I thought that I owed it to you, as the council associated with me in the final determination of our international obligations, to disclose to you without reserve the thought and purpose that have been taking from in my mind in regard to the duty of our Government in the days to come when it will be necessary to lay afresh and upon a new plan the foundations of peace among the nations.

It is inconceivable that the people of the United States should play no part in that great enterprise. To take part in such a service will be the opportunity for which they have sought to prepare themselves by the very principles and purposes of their polity and the approved practises of their Government ever since the days when they set up a new nation in the high and honorable hope that it might in all that it was and did show mankind the way to liberty. The cannot in honor withhold the service to which they are now about to be challenged. They do not wish to withhold it. But they owe it to themselves and to the other nations of the world to state the conditions under which they will feel free to render it.

That service is nothing less than this: to add their authority and their power to the authority and force of other nations to gurantee peace and justice throughout the world. Such a settlement cannot now be long postponed. It is right that before it comes this Government should frankly formulate the conditions upon which it would feel justified in asking our people to approve its solemn and formal adherence to a league for peace. I am here to attempt to state those conditions.

The present war must first be ended; but we owe it to candor and to a just regard for the opinion of mankind to say that, so far as our participation in guarantees of future peace is concerned, it makes a great deal of difference in what way and upon what terms it is ended. Treaties and agreements which bring it to an end must embody terms that will create a peace that is worth guaranteeing and preserving, a peace that will win the approval of mankind, not merely a peace that will serve the several interests and immediate aims of the nations engaged. We shall have no voice in determining what those terms shall be, but we shall, I feel sure, have a voice in determining whether they shall be made lasting or not by the guarantees of a universal covenant; and our judgment upon what is fundamental and essential as a condition precedent to permanency should be spoken now, not afterwards, when it may be too late.

No covenant of cooperative peace that does not include the peoples of the New World can suffice to keep the future safe against war; and yet there is only one sort of peace that the peoples of America could join in guaranteeing. The elements of that peace must be elements that engage the confidence and satisfy the principles of the American Governments, elements consistent with the political faith and the practical convictions which the peoples of America have once for all embraced and undertaken to defend.

I do not mean to say that any American Government would throw any opposition in the way of any terms of peace the Governments now at war might agree upon, or seek to upset them when made, whatever they might be. I only take it for granted that mere terms of peace between the belligerents will not satisfy even the belligerents themselves. Mere agreements may not make peace secure. It will be necessary that a force be

created as a Guarantor of the permanency of the settlement so much greater than the force of any nation now engaged or any alliance hitherto formed or projected that no nation, no probable combination of nations, could face of withstand it. If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind.

The terms of the immediate peace agreed upon will determine whether it is a peace for which such a guarantee can be secured. The question upon which the whole future peace and policy of the world depends is this: is the present war a struggle for a just and secure peace, or only for a new balance of power? If it be only a struggle for a new balance of power, who will guarantee, who can guarantee, the stable equilibrium of the new arrangement? Only a tranquil Europe can be a stable Europe. There must be, not a balance of power, but a community of power; not organized rivalries, but an organized common peace.

Fortunately we have received very explicit assurances on this point. The statesmen of both of the groups of nations now arrayed against one another have said, in terms that could not be misinterpreted, that it was no part of the purpose they had in mind to crush their antagonists. But the implications of these assurances may not be equally clear to all, — may not be the same on both sides of the water. I think it would be serviceable if I attempt to set forth what we understand them to be.

They imply, first of all, that it must be a peace without victory. I beg that I may be permitted to put my own interpretation upon it and that it may be understood that no other interpretation was in my thought. I am seeking only to face realities, and to face them without inopportune concealments. Victory would mean peace forced upon the loser, a victor's terms imposed upon the vanquished. It would be accepted in humiliation, under duress, at an intolerable sacrifice, and would leave a sting, a resentment, a bitter memory upon which terms of peace would rest, not permanently, but only as upon quicksand. Only a peace between equals can last, — only a peace the very principle of which is quality and common participation in a common benefit. The right state of mind, the right feeling between nations, is as necessary for a lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance.

The equality of nations upon which peace must be founded if it is to last must be an equality of rights; the guarantees exchanged must neither recognize nor imply a difference between big nations and small, between those that are powerful and those that are weak. Right must be based upon the common strength, not upon the individual strength, of the nations upon whose concert peace will depend. Equality of territory or of resources there of course cannot be; nor any other sort of equality not gained in the ordinary peaceful and legitimate development of the peoples themselves. But no one asks or expects anything more than an equality of rights. Mankind is looking now for freedom of life, not for equipoises of power.

And there is a deeper thing involved than even equality of right among organized nations. No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere existe to hand peoples about from potentate to potentate as if they were property. I take it for granted, for instance, if I may venture upon a single example, that statesmen everywhere are agreed that there should be a united, independent, and autonomous Poland, and that henceforth inviolable security of life, of worship, and of industrial and social development should be guaranteed to all peoples who have lived hitherto under the power of Governments devoted to a faith and purpose hostile to their own.

I speak of this, not because of any desire to exalt an abstract political principle which has always been held very dear by those who have sought to build up liberty in America, but for the same reason that I have spoken of the other conditions of peace which seem to me clearly indispensable, — because I wish frankly to uncover realities. Any peace which does not recognize and accept this principle will inevitably be upset. I will not rest upon the affections or the convictions of mankind. The ferment of spirit of whole populations will fight subtly and constantly against it, and all the world will sympathize. The world can be at peace only if its life is stable, and there can be no stability where the will is in rebellion, where there is not tranquillity of spirit and a sense of justice, of freedom, and of right.

So far as practicable, moreover, every great people now struggling towards a full development of its resources and of its powers should be assured a direct outlet to the great highways of the sea. Where this cannot be done by the cession of territory, it no doubt will be done by the neutralization of direct rights of way under the general guarantee which will assure the peace itself. With a right comity of arrangement no nation need be shut away from free access to the open paths of the world's commerce.

And the paths of the sea must alike in law and fact be free. The freedom of the seas is the sine qua non of peace, equality, and cooperation. No doubt a somewhat radical reconsideration of many of the rules of international practice hitherto thought to be established may be necessary in order to make the seas indeed free and common in practically all circumstances for the use of mankind, but the motive for such changes in convincing and compelling There can be no trust or intimacy between the peoples of the world without them. The free, constant, unthreatened intercourse of nations is an essential part of the process of peace and of development. It need not be difficult either to define or to secure the freedom of the seas if the Governments of the world sincerely desire to come to an agreement concerning it.

It is a problem closely connected with the limitation of naval armaments and the cooperation of the navies of the world in keeping the seas at once free and safe. And the question of Limiting naval armaments opens the wider and perhaps more difficult question of the limitation of armies and of all programs of military preparation. Difficult and delicate as these questions are, they must be faced with the utmost candor and decided in a spirit of real accomodation if peace is to come with healing in its wings, and to come to stay. Peace cannot be had without concession and sacrifice. There can be no sense of safety and equallity among the nations if great preponderating armaments are henceforth to continue here and there to be built up and maintained. The statesmen of the world must plan for peace and nations must adjust and accomodate their policy to it as they have planned for war and made ready for pitiless contest and rivalry. The question of armaments, whether on land or on sea, is the most immediately and intensely practical question connected with the future fortunes of nations and of mankind.

I have spoken upon these great matters without reserve and with the outmost explicitness because it has seemed to me to be necessary if the world's yearning desire for peace was anywhere to find free voice and utterance. Perhaps I am the only person in high authority amongst all the peoples of the world who is at liberty to speak and hold nothing back. I am speaking as an individual, and yet I am speaking also, of course, as the responsible head of a great Government, and I feel confident that I have said what the people of the United States would wish me to say. May I not add that I hope and believe that I am in effect speaking for liberals

and friends of humanity in every nation and of every program of liberty? I would fain believe that I am speaking for the silent mass of mankind everywhere who have yet had no place or opportunity to speak their real hearts out concerning the death and ruin they see to have come already upon the persons and the homes they hold most dear.

And in holding out the expectation that the people and Government of the United States will join the other civilized nations of the world in guaranteeing the permanence of peace upon such terms as I have named, I speak with the greatest boldness and confidence because it is clear to every man who can think that there is in this promise no breach in either our tradition or our policy as a nation, but a fulfillment, rather, of all that we have professed or striven for.

I am proposing, as it were, that the nations should with one accord adopt the doctrine of President *Monroe* as the doctrine of the world: that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful.

I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of powers, catch them in a net of intrigue and selfish rivalry, and disturb their own affairs with own affairs with influences intruded from without. There is no entangling alliance in a concert of power. When all unite to act in the same sense and with the same purpose all act in the common interest and are free to live their own lives under a common protection.

I am proposing government by the consent of the governed; that freedom of the seas which in international conference after conference representatives of the people of the United States have urged with the eloquence of those who are the convinced disciples of liberty; and that moderation of armaments which makes of the armies and navies a power for order merely, not an instrument of aggression or of selfish violence.

There are American principles, American policies. We could stand for no others. Yet they are the principles and policies of forward looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of manking and must prevail.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

gez. *James W. Gerard.*

His Excellency Mr. *Zimmermann,*
Imperial Secretary of State for Foreign Affairs, etc. etc. etc.

Nr. 2011. Verschärfte Sperre der Nordseebucht durch England. (Aus einer englischen Note vom Januar 1917 an die norwegische Gesandtschaft in London.) (Vossische Zeitung vom 28. Januar 1917, Kreuzzeitung vom 30. Januar 1917.)

Infolge der hemmungslosen Kriegführung mit Minen und Unterseebooten, die die Deutschen nicht nur gegen die alliierten Mächte, sondern auch gegen den neutralen Schiffsverkehr führen, und angesichts der Tatsache, daß Handelsschiffe dauernd ohne Rücksicht auf die Sicherheit der Besatzungen versenkt werden, macht die britische Regierung bekannt, daß vom 7. Februar an das nachstehend genannte Gebiet in der Nordsee durch Operationen gegen den

Feind dem gesamten Schiffsverkehr gefährlich werden wird und daß das Gebiet deshalb vermieden werden soll. Das Gebiet umfaßt alle Gewässer, die nicht zu den holländischen oder dänischen Hoheitsgewässern gehören, südlich und östlich einer Linie liegend, die 4 englische Meilen von der Küste Jütlands 56 Grad nördl. Breite, 8 Grad östl. Länge beginnt und die durch folgende Punkte geht: 56 Grad nördl. Breite, 6 Grad östl. Länge, 54 Grad 45 Min. nördl. Breite, 4 Grad 30 Min. östl. Länge, von hier nach einem Punkt 53 Grad 27 Min. nördl. Breite, 5 Grad östl. Länge, sieben englische Meilen von der holländischen Küste. Aus Rücksicht auf die holländische Küstenfahrt, die infolge Verkehrsschwierigkeiten nicht streng auf holländische Hoheitsgewässer beschränkt werden kann, wird eine sichere Passage südlich einer Linie eröffnet werden, die durch folgende Punkte geht: 53 Grad 27 Min. nördl. Breite, 5 Grad östl. Länge, 51 Grad 31 Min. nördl. Breite, 5 Grad 30 Min. östl. Länge, 53 Grad 34 Min. nördl. Breite, 6 Grad östl. Länge, 53 Grad 39 Min. nördl. Breite, 6 Grad 23 Min. östl. Länge.

Nr. 2012. Deutsche Note vom 31. Januar 1917 nebst Denkschrift an Amerika über deutsche Seesperrgebiete um England und Frankreich und im Mittelmeer.

(**A. A. D. S.,** Nr. 16.)

Berlin, den 31. Januar 1917.

Eure Exzellenz haben die Güte gehabt, mir unter dem 22. d. M. von der Botschaft Mitteilung zu machen, die der Herr Präsident der Vereinigten Staaten von Amerika am gleichen Tage an den amerikanischen Senat gerichtet hat. Die Kaiserliche Regierung hat von dem Inhalt der Botschaft mit der ernsten Aufmerksamkeit Kenntnis genommen, die den von hohem Verantwortlichkeitsgefühl getragenen Darlegungen des Herrn Präsidenten zukommt. Es gereicht ihr zu großer Genugtuung, festzustellen, daß die Richtlinien dieser bedeutsamen Kundgebung in weitem Umfange mit den Grundsätzen und Wünschen übereinstimmen, zu denen sich Deutschland bekennt. Hierzu gehört an erster Stelle das Recht der Selbstbestimmung und die Gleichberechtigung aller Nationen; in Anerkennung dieses Prinzips würde Deutschland es aufrichtig begrüßen, wenn Völker, wie Irland und Indien, die sich der Segnungen staatlicher Unabhängigkeit nicht erfreuen, nunmehr ihre Freiheit erlangten. Bündnisse, die die Völker in den Wettbewerb um die Macht hineintreiben und in ein Netz eigennütziger Intrigen verstricken, lehnt auch das deutsche Volk ab. Dagegen ist seine freudige Mitarbeit allen Bemühungen gesichert, die auf die Verhütung künftiger Kriege abzielen. Die Freiheit der Meere als Vorbedingung für den freien Bestand und den friedlichen Verkehr der Völker hat ebenso wie die offene Tür für den Handel aller Nationen stets zu den leitenden Grundsätzen der deutschen Politik gehört.

Um so tiefer beklagt es die Kaiserliche Regierung, daß das friedensfeindliche Verhalten ihrer Gegner es der Welt unmöglich macht, schon jetzt die Verwirklichung dieser erhabenen Ziele in Angriff zu nehmen. Deutschland und seine Verbündeten waren bereit, alsbald in Friedensverhandlungen einzutreten, und hatten als Grundlage die Sicherung des Daseins, der Ehre und der Entwicklungsfreiheit ihrer Völker bezeichnet. Ihre Pläne waren, wie sie in der Note vom 12. Dezember 1916 ausdrücklich betonten, nicht auf die Zerschmetterung oder Vernichtung der Gegner gerichtet und nach ihrer Ueberzeugung mit den Rechten der anderen Nationen wohl vereinbar. Was insbesondere Belgien anlangt, das den Gegenstand warmherziger

Sympathien in den Vereinigten Staaten bildet, so hatte der Reichskanzler wenige Wochen zuvor erklärt, daß eine Einverleibung Belgiens niemals in Deutschlands Absichten gelegen habe. Deutschland wollte in dem mit Belgien zu schließenden Frieden lediglich Vorsorge dafür treffen, daß dieses Land, mit dem die Kaiserliche Regierung in guten nachbarlichen Verhältnissen zu leben wünscht, von den Gegnern nicht zur Förderung feindlicher Anschläge ausgenutzt werden kann. Solche Vorsorge ist um so dringender geboten, als die feindlichen Machthaber in wiederholten Reden und namentlich in den Beschlüssen der Pariser Wirtschaftskonferenz unverhüllt die Absicht ausgesprochen haben, Deutschland auch nach Wiederherstellung des Friedens nicht als gleichberechtigt anzuerkennen, vielmehr systematisch weiter zu bekämpfen.

An der Eroberungssucht der Gegner, die den Frieden diktieren wollen, ist der Friedensversuch der vier Verbündeten gescheitert. Unter dem Aushängeschild des Nationalitätenprinzips haben sie als Kriegsziel enthüllt, Deutschland, Oesterreich-Ungarn, die Türkei und Bulgarien zu zerstückeln und zu entehren. Dem Versöhnungswunsch stellen sie ihren Vernichtungswillen entgegen. Sie wollen den Kampf bis aufs äußerste.

So ist eine neue Sachlage entstanden, die auch Deutschland zu neuen Entschlüssen zwingt. Seit zwei und einhalb Jahren mißbraucht England seine Flottenmacht zu dem frevelhaften Versuch, Deutschland durch Hunger zur Unterwerfung zu zwingen. In brutaler Mißachtung des Völkerrechts unterbindet die von England geführte Mächtegruppe nicht nur den legitimen Handel ihrer Gegner; durch rücksichtslosen Druck nötigt sie auch die neutralen Staaten, jeden ihr nicht genehmen Handelsverkehr aufzugeben oder den Handel nach ihren willkürlichen Vorschriften einzuschränken. Das amerikanische Volk kennt die Bemühungen, die unternommen worden sind, um England und seine Bundesgenossen zur Rückkehr zum Völkerrecht und zur Achtung vor dem Gesetz der Freiheit der Meere zu bewegen. Die englische Regierung verharrt bei ihrem Aushungerungskrieg, der zwar die Wehrkraft des Gegners nicht trifft, aber Frauen und Kinder, Kranke und Greise zwingt, um ihres Vaterlandes willen schmerzliche, die Volkskraft gefährdende Entbehrungen zu erdulden. So häuft britische Herrschsucht kalten Herzens die Leiden der Welt unbekümmert um jedes Gebot der Menschlichkeit, unbekümmert um die Proteste der schwer geschädigten Neutralen, unbekümmert selbst um die stumme Friedenssehnsucht bei den Völkern der eigenen Bundesgenossen. Jeder Tag, den das furchtbare Ringen andauert, bringt neue Verwüstungen, neue Not und neuen Tod. Jeder Tag, um den der Krieg abgekürzt wird, erhält auf beiden Seiten Tausenden tapferer Kämpfer das Leben und ist eine Wohltat für die gepeinigte Menschheit.

Die Kaiserliche Regierung würde es vor ihrem eigenen Gewissen, vor dem deutschen Volk und vor der Geschichte nicht verantworten können, wenn sie irgend ein Mittel unversucht ließe, das Ende des Krieges zu beschleunigen. Mit dem Herrn Präsidenten der Vereinigten Staaten hatte sie gehofft, dieses Ziel durch Verhandlungen zu erreichen. Nachdem der Versuch zur Verständigung von den Gegnern mit verschärfter Kampfansage beantwortet worden ist, muß die Kaiserliche Regierung, wenn sie in höherem Sinne der Menschheit dienen und sich an den eigenen Volksgenossen nicht versündigen will, den ihr von neuem aufgedrungenen Kampf ums Dasein nunmehr unter vollem Einsatz aller Waffen fortführen. Sie muß daher auch die Beschränkungen fallen lassen, die sie sich bisher in der Verwendung ihrer Kampfmittel zur See auferlegt hat.

Im Vertrauen darauf, daß das amerikanische Volk und seine Regierung sich den Gründen dieses Entschlusses und seiner Notwendigkeit nicht verschließen werden, hofft die Kaiserliche Regierung, daß die Vereinigten Staaten

die neue Sachlage von der hohen Warte der Unparteilichkeit würdigen und auch an ihrem Teil mithelfen werden, weiteres Elend und vermeidbare Opfer an Menschenleben zu verhüten.

Indem ich wegen der Einzelheiten der geplanten Kriegsmaßnahmen zur See auf die anliegende Denkschrift Bezug nehmen darf, darf ich gleichzeitig der Erwartung Ausdruck geben, daß die amerikanische Regierung amerikanische Schiffe vor dem Einlaufen in die in der Anlage beschriebenen Sperrgebiete und ihre Staatsangehörigen davor warnen wird, den mit Häfen der Sperrgebiete verkehrenden Schiffen Passagiere oder Waren anzuvertrauen.

Ich benutze diesen Anlaß, um Eurer Exzellenz den Ausdruck meiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *Zimmermann.*

An den Botschafter der Vereinigten Staaten von Amerika
The Honorable James W. Gerard, Berlin.

Denkschrift.

Vom 1. Februar 1917 ab wird in den nachstehend bezeichneten Sperrgebieten um Großbritannien, Frankreich und Italien herum und im östlichen Mittelmeer jedem Seeverkehr ohne weiteres mit allen Waffen entgegengetreten werden. Solche Sperrgebiete sind

a) im Norden ein Gebiet um England und Frankreich, das begrenzt wird durch eine Linie in 20 (zwanzig) Seemeilen Abstand längs der holländischen Küste bis Terschelling-Feuerschiff, den Längengrad von Terschelling-Feuerschiff bis Udsire, eine Linie von dort über den Punkt 62 Grad Nord 0 (null) Grad Länge nach 62 Grad Nord 5 Grad West, weiter zu einem Punkt 3 (drei) Seemeilen südlich der Südspitze der Faröer, von dort über den Punkt 62 Grad Nord 10 Grad West nach 61 Grad Nord 15 Grad West, dann 57 Grad Nord 20 Grad West, bis 47 Grad Nord 20 Grad West weiter nach 43 Grad Nord 15 Grad West, dann auf dem Breitengrad 43 Grad Nord entlang bis 20 Seemeilen von Kap Finisterre und in 20 Seemeilen Abstand entlang der spanischen Nordküste bis zur französischen Grenze;

b) im Süden das Mittelmeer. Der neutralen Schiffahrt bleibt offen das Seegebiet westlich der Linie Pt. de l'Espiquette bis zu 38 Grad 20 Minuten Nord und 6 Grad Ost sowie nördlich und westlich eines 60 Seemeilen breiten Streifens längs der nordafrikanischen Küste, beginnend auf 2 Grad Westlänge.

Zur Verbindung dieses Seegebiets mit Griechenland führt ein 20 Seemeilen breiter Streifen nördlich bezw. östlich folgender Linie: 38 Grad Nord und 6 Grad Ost nach 38 Grad Nord und 10 Grad Ost nach 37 Grad Nord und 11 Grad 30 Minuten Ost nach 34 Grad Nord und 11 Grad 30 Minuten Ost nach 34 Grad Nord und 22 Grad 30 Minuten Ost.

Von hier führt ein zwanzig Seemeilen breiter Streifen westlich 22 Grad 30 Minuten Ostlänge in die griechischen Hoheitsgewässer.

Neutrale Schiffe, die die Sperrgebiete befahren, tun dies auf eigene Gefahr. Wenn auch Vorsorge getroffen ist, daß neutrale Schiffe, die am 1. Februar auf der Fahrt nach Häfen der Sperrgebiete sind, während einer angemessenen Frist geschont werden, so ist doch dringend anzuraten, daß sie mit allen verfügbaren Mitteln gewarnt und umgeleitet werden.

Neutrale Schiffe, die in Häfen der Sperrgebiete liegen, können mit gleicher Sicherheit die Sperrgebiete noch verlassen, wenn sie vor dem 5. Februar auslaufen und den kürzesten Weg ins freie Gebiet nehmen.

Der Verkehr der regelmäßigen amerikanischen Passagierdampfer kann unbehelligt weitergehen, wenn

a) Falmouth als Zielhafen genommen wird,

b) auf dem Hin- und Rückwege die Scillys sowie ein Punkt 50 Grad Nord, 20 Grad West angesteuert wird. Auf diesem Wege werden keine deutschen Minen gelegt werden,

c) die Dampfer folgende besondere, in den amerikanischen Häfen ihnen allein gestattete Abzeichen führen: Anstrich des Schiffsrumpfes und der Aufbauten 3 Meter breite Vertikalstreifen abwechselnd weiß und rot. In jedem Mast eine große weiß- und rotkarierte Flagge, am Heck amerikanische Nationalflagge. Bei Dunkelheit müssen Nationalflagge und Anstrich der Schiffe nach Möglichkeit von weitem gut erkennbar und die Schiffe durchweg hell erleuchtet sein,

d) ein Dampfer wöchentlich in jeder Richtung geht, dessen Ankunft in Falmouth Sonntags, Abfahrt aus Falmouth Mittwochs erfolgt,

e) Garantie der amerikanischen Regierung gegeben wird, daß diese Dampfer keine Bannware (nach deutschen Bannwarenlisten) mit sich führen.

Karten, in welchen die Sperrgebiete eingezeichnet sind, sind in je zwei Exemplaren beigefügt.

Den Regierungen der anderen neutralen Staaten sind entsprechende Noten übermittelt worden.

Den Vertretern der anderen neutralen Mächte ist am selben Tage eine entsprechende Mitteilung zugegangen.

Nr. 2013. Erklärung des deutschen Reichskanzlers in der Sitzung des Hauptausschusses des Reichstages vom 31. Januar 1917. (Norddeutsche Allgemeine Zeitung Nr. 31, zweite Ausgabe vom 1. Februar 1917.)

„Am 12. Dezember habe ich im Reichstage die Erwägungen dargelegt, die zu unserem Friedensangebot geführt hatten. Die Antwort unserer Gegner hat klipp und klar dahin gelautet, daß sie Verhandlungen mit uns über den Frieden ablehnen, daß sie nur von einem Frieden etwas wissen wollen, den sie diktieren. Damit ist vor aller Welt die Schuldfrage wegen der Fortsetzung des Krieges entschieden. Die Schuld lastet allein auf unseren Gegnern. Ebenso fest steht unsere Aufgabe. Ueber die Bedingungen des Feindes können wir nicht diskutieren. Nur von einem aufs Haupt geschlagenen Volke könnten sie angenommen werden. Kämpfen also heißt es.

Die Botschaft des Präsidenten *Wilson* an den Kongreß zeigt seinen ernsten Wunsch, den Weltfrieden wieder herbeizuführen. Viele der von ihm aufgestellten Maximen begegnen sich mit unseren Zielen. Freiheit der Meere, Beseitigung des Systems der *balance of power*, das immer zu neuen Verwicklungen führen muß, Gleichberechtigung der Nationen, offene Tür. Was aber sind die Friedensbedingungen der Entente? Deutschlands Wehrkraft soll vernichtet werden, Elsaß-Lothringen und unsere Ostmarken sollen wir verlieren, die Donaumonarchie soll aufgelöst, Bulgarien um seine nationale Einheit betrogen, die Türkei aus Europa verdrängt und in Asien zerschlagen werden. Die Vernichtungsabsichten unserer Gegner können nicht stärker ausgedrückt werden.

Zum Kampfe aufs letzte sind wir herausgefordert. Wir nehmen die Herausforderung an. Wir setzen alles ein und wir werden siegen.

Durch diese Entwicklung der Dinge ist die Entscheidung über die Führung des U-Bootkrieges in ihr letztes und akutes Stadium gedrängt worden.

Die Frage des U-Bootkrieges hat uns, wie die Herren sich erinnern werden, gemeinsam in diesem Ausschuß dreimal beschäftigt, im März, im Mai und im September vorigen Jahres. Ich habe jedesmal den Herren in

eingehenden Darlegungen das Für und Wider der Frage vorgetragen. Ich habe mit Nachdruck darauf hingewiesen, daß ich jedesmal *pro tempore* sprach, nicht als grundsätzlicher Anhänger oder grundsätzlicher Gegner der uneingeschränkten Anwendung der U-Boote, sondern in Erwägung der militärischen, politischen und wirtschaftlichen Gesamtsituation, immer von der Prüfung der Frage ausgehend: Bringt uns der uneingeschränkte U-Bootkrieg dem siegreichen Frieden näher oder nicht? „Jedes Mittel — sagte ich im März —, das den Krieg abzukürzen geeignet ist, ist das allerhumanste". „Auch das rücksichtsloseste Mittel, das uns zum Siege und zum schnellen Siege führt — sagte ich damals — muß angewandt werden".

Der Reichskanzler führte dann weiter aus, weshalb er im März und im Mai des vergangenen Jahres gegen den uneingeschränkten U-Bootkrieg gewesen sei und weshalb die Frage auch im September nach dem übereinstimmenden Urteil der politischen und der militärischen Leitung nicht spruchreif war.

Er kam in diesem Zusammenhang auf seine frühere Aeußerung zurück:

„Sobald ich in Uebereinstimmung mit der Obersten Heeresleitung zu der Ueberzeugung komme, daß uns der rücksichtslose U-Bootkrieg dem siegreichen Frieden nähert, dann wird der U-Bootkrieg gemacht werden."

„Dieser Zeitpunkt", fuhr er fort, „ist jetzt gekommen. Im vorigen Herbst war die Zeit noch nicht reif, aber heute ist der Augenblick gekommen, wo wir mit der größten Aussicht auf Erfolg das Unternehmen wagen können. Einen späteren Zeitpunkt dürfen wir aber auch nicht abwarten.

Was hat sich geändert? Zunächst das Wichtigste.

Die Zahl unserer U-Boote hat sich gegen das vorige Frühjahr sehr wesentlich erhöht. Damit ist eine feste Grundlage für den Erfolg geschaffen.

Dann der zweite mitausschlaggebende Punkt.

Die schlechte Weltgetreideernte. Sie stellt schon jetzt England, Frankreich und Italien vor ernste Schwierigkeiten. Wir haben die feste Hoffnung, diese Schwierigkeiten durch den unbeschränkten U-Bootkrieg zur Unerträglichkeit zu steigern. Auch die Kohlenfrage ist im Kriege eine Lebensfrage. Sie ist schon jetzt, wie Sie wissen, in Frankreich und Italien kritisch. Unsere U-Boote werden sie noch kritischer machen.

Hinzu kommt namentlich für England die Zufuhr von Erzen für die Munitionsfabrikation in weitestem Sinne und von Holz für den Kohlenbergbau.

Noch gesteigert werden die Schwierigkeiten unserer Feinde auf diesen Gebieten durch die Zunahme der feindlichen Frachtraumnot. Hier hat die Zeit und hat der Kreuzerkrieg der U-Boote dem entscheidenden Schlage vorgearbeitet. Unter der Frachtraumnot leidet die Entente in allen ihren Gliedern. Sie macht sich für Italien und Frankreich nicht weniger als für England geltend.

Dürfen wir so jetzt die positiven Vorteile des uneingeschränkten U-Bootkrieges sehr viel höher einschätzen als im vorigen Frühjahr, so sind gleichzeitig die Gefahren, die uns aus dem U-Bootkrieg erwachsen, seit jener Zeit gesunken".

Der Reichskanzler erörterte darauf eingehend die allgemeine politische Lage.

Er fuhr dann fort: „Der Feldmarschall *Hindenburg* hat mir vor wenigen Tagen die Lage wie folgt bezeichnet:

Unsere Front steht auf allen Seiten fest. Wir haben überall die nötigen Reserven. Die Stimmung der Truppen ist gut und zuversichtlich. Die militärische Gesamtlage läßt es zu, alle Folgen auf uns zu nehmen, die der uneingeschränkte U-Bootkrieg nach sich ziehen könnte. Und weil dieser U-Bootkrieg unter allen Umständen ein Mittel ist, um unsere Feinde auf das schwerste zu schädigen, muß er begonnen werden.

Admiralstab und Hochseeflotte sind der festen Ueberzeugung, einer Ueberzeugung, die in den Erfahrungen des U-Bootkreuzerkrieges ihre praktische Stütze findet, daß England durch die Waffe zum Frieden gebracht werden wird.

Unsere Verbündeten stimmen unseren Ansichten zu. Oesterreich-Ungarn schließt sich unserem Vorgehen auch praktisch an. Ebenso wie wir um England und die Westküste von Frankreich ein Sperrgebiet legen, in dem wir jede Schiffahrt nach den feindlichen Ländern zu verhindern trachten werden, ebenso erklärt Oesterreich-Ungarn ein Sperrgebiet um Italien. Allen neutralen Ländern ist für den Verkehr untereinander außerhalb des Sperrgebietes freie Bahn gelassen. Amerika bieten wir ebenso, wie wir es schon 1915 getan haben, unter bestimmten Modalitäten gesicherten Personenverkehr auch mit den bestimmten englischen Häfen an."

Darauf verlas der Reichskanzler die Note an die Regierung der Vereinigten Staaten und teilte mit, daß entsprechende Noten an die übrigen Neutralen gerichtet worden sind.

Der Reichskanzler schloß mit folgenden Worten:

„Niemand unter uns wird vor dem Ernste des Schrittes, den wir tun, die Augen verschließen. Daß es um unser Leben geht, weiß seit dem 4. August 1914 jeder. Und durch die Ablehnung unseres Friedensangebotes ist dies Wissen blutig unterstrichen.

Als wir 1914 gegenüber der russischen Generalmobilmachung zum Schwerte greifen mußten, da taten wir es in dem Gefühle tiefster Verantwortung gegen unser Volk und in dem Bewußtsein entschlossener Kraft, die da spricht: Wir müssen, darum können wir auch. Unendliche Ströme Blutes sind seitdem geflossen, aber das Müssen und Können haben sie nicht weggewaschen. Wenn wir uns jetzt zur Anwendung unserer besten und schärfsten Waffe entschlossen haben, so leitet uns nichts als nüchterne Erwägung aller in Frage kommenden Umstände, nichts als der feste Wille, unserem Volk herauszuhelfen aus der Not und Schmach, die ihm unsere Feinde zudenken. Der Erfolg steht in höherer Hand. Was Menschenkraft vermag, um ihn für unser Vaterland zu erzwingen, seien Sie sicher, meine Herren, nichts dazu ist versäumt, alles dazu wird geschehen."

Nr. 2014. Oesterreichisch-ungarische Note vom 31. Januar 1917 an den amerikanischen Botschafter in Wien. (Neue Freie Presse, Wien, vom 1. Februar 1917, Nr. 18838.)

Der Unterzeichnete . . . hat die Ehre gehabt, das Schreiben vom 22. d. zu erhalten, mit welchem es Seiner . . . des . . . gefällig war, die Botschaft mitzuteilen, welche der Herr Präsident der Vereinigten Staaten von Amerika am gleichen Tage an den amerikanischen Senat gerichtet hat.

Die k. u. k. Regierung hat nicht ermangelt, den Inhalt dieser bedeutsamen und von hohem sittlichen Ernste erfüllten Kundgebung einer aufmerksamen Erwägung zu unterziehen. Sie verkennt nicht die erhabenen Ziele, welche der Herr Präsident ins Auge faßt, muß aber vor allem feststellen, daß der Wunsch Mr. *Wilsons,* einen dauernden Frieden anzubahnen, dermalen schon durch die Ablehnung vereitelt erscheint, welche das Friedensangebot Oesterreich-Ungarns und seiner Verbündeten seitens der Gegner erfahren hat.

Oesterreich-Ungarn und seine Verbündeten haben im August 1914 den ihnen aufgezwungenen Kampf aufgenommen. Das Bewußtsein, das es sich um die Verteidigung ihres Bestandes und ihrer Lebensinteressen handle, hat ihnen die Kraft verliehen, der Ueberzahl der Feinde standzuhalten und Erfolge zu erringen, an welche jene der Gegner nicht heranreichen. In dreißig Kriegs-

monaten haben sich diese Erfolge befestigt und vergrößert. In dem Maße, als die Eroberungspläne der Feinde zunichte wurden, konnten Oesterreich-Ungarn und seine Verbündeten ihre rein defensiven Kriegsziele als erreicht betrachten. Diese maßvolle Erkenntnis und der Wunsch, weiteres nutzloses Blutvergießen zu vermeiden, haben das Friedensangebot der vier verbündeten Mächte gezeitigt. Ihre Gegner, von dem Wahn geblendet, dem Schicksale doch noch eine ihnen günstigere Wendung geben und uns zerschmettern zu können, haben dieses Angebot schroff zurückgewiesen. Sie haben Forderungen für den Friedensschluß aufgestellt, welche die völlige Niederwerfung der vier verbündeten Mächte zur Voraussetzung und ihre Vernichtung zum Ziele hätten.

Gott und die Welt sind Zeugen, wer an der Fortsetzung des Krieges die Schuld trägt. Gegenüber der Absicht der Gegner, die Heere Oesterreich-Ungarns und seiner Verbündeten zu bezwingen, ihre Flotten zu vernichten und ihre Bevölkerungen auszuhungern, muß der Kampf seinen Fortgang nehmen zu Lande und zur See mit allen, auch den schärfsten Waffen. Die gesteigerte Anwendung aller Kriegsmittel allein macht eine Abkürzung des Krieges möglich.

Die Gegner waren schon bisher bestrebt, den Seeverkehr Oesterreich-Ungarns und seiner Verbündeten zu unterbinden und diesen Mächten jede Zufuhr abzuschneiden. Gleichwie auf anderen Meeren haben sie auch in der Adria sogar Hospitalschiffe, wie die „Elektra", und unbewaffnete Personendampfer, wie die „Dubrovnik", die „Biokovo", „Daniel Ernö" und die „Zagreb", ohne vorherige Warnung torpediert. Oesterreich-Ungarn und seine Verbündeten werden fortan ihrerseits die gleiche Methode anwenden, indem sie Großbritannien, Frankreich und Italien von jedem Seeverkehre abschneiden und zu diesem Behufe vom 1. Februar 1917 innerhalb eines bestimmten Sperrgebietes jede Schiffahrt mit allen Mitteln verhindern werden.

In Ausführung dieser Absicht wird vom 1. Februar 1917 ab in den nachstehend bezeichneten und auf den beiden beiliegenden Karten ersichtlichen Sperrgebieten um Großbritannien, Frankreich und Italien herum und im östlichen Mittelmeere jedem Seeverkehre ohne weiteres mit allen Waffen entgegengetreten werden.

1. Sperrgebiet im Norden:
   (wörtlich wie in der deutschen Denkschrift unter a).
2. Das Mittelmeer wird als Kriegsgebiet erklärt
   (wörtlich wie in der deutschen Denkschrift unter b).

Neutrale Schiffe, die diese Gebiete befahren, tun dies auf eigene Gefahr.

Wenn auch Vorsorge getroffen ist, daß neutrale Schiffe, die am 1. Februar auf der Fahrt nach Häfen der Sperrgebiete in deren Nähe gekommen sind, während einer angemessenen Frist geschont werden, so ist doch dringend anzuraten, daß sie mit allen verfügbaren Mitteln gewarnt und umgeleitet werden.

Neutrale Schiffe, die in Häfen der Sperrgebiete liegen, können mit gleicher Sicherheit die Sperrgebiete noch verlassen, wenn sie vor dem 5. Februar auslaufen und den kürzesten Weg in freies Gebiet nehmen.

Auch dieser Entschluß wurde von Oesterreich-Ungarn in der Absicht gefaßt, durch wirksame Kriegsmittel den Kampf abzukürzen und einem Frieden näherzukommen, für welchen es zum Unterschiede von seinen Gegnern mäßige, von keinem Vernichtungsgedanken geleitete Bedingungen ins Auge faßt, nach wie vor beseelt von der Absicht, daß der Endzweck dieses Krieges keine Eroberungen, sondern die freie gesicherte Entwicklung des eigenen wie der anderen Staaten ist.

Von vollem Vertrauen in die bewährte Tapferkeit und Tüchtigkeit ihrer Land- und Seestreitkräfte getragen und gestählt durch die Notwendig-

keit, den gegnerischen Vernichtungswillen zu vereiteln, treten Oesterreich-Ungarn und die mit ihm verbündeten Mächte mit bitterer Entschlossenheit, aber auch mit der Gewißheit in die bevorstehende ernste Phase des Kampfes, daß dieselbe zu Erfolgen führen werde, welche das jahrelange Ringen endgültig entscheiden und hierdurch die Opfer an Gut und Blut rechtfertigen werden.

Ich beehre mich, Sie zu ersuchen, vorstehendes gefälligst zur Kenntnis der . . . . . . Regierung bringen zu wollen.

Nr. 2015. Mitteilung über Wilsons Botschaft vom 3. Februar 1917 an den Kongreß. (Norddeutsche Allgemeine Zeitung vom 5. Februar 1917, Nr. 35.)

Washington, 3. Februar 1917.

Wilson erinnerte in seiner Botschaft an den Kongreß an die amerikanische Note an Deutschland vom 8. April nach der Torpedierung des „Sussex", an Deutschlands Antwort hierauf vom 4. Mai und an die Antwort Amerikas vom 8. Mai, in der die deutschen Zusicherungen angenommen wurden. *Wilson* sagte, Deutschland habe diese Note nicht beantwortet. Hierauf zitierte *Wilson* aus dem deutschen Memorandum vom 31. Januar und sagte: Angesichts dieser Erklärung, die plötzlich und ohne vorherige Andeutung irgendwelcher Art vorsätzlich die feierlichen Versicherungen, die in der deutschen Note vom 4. Mai gegeben wurden, zurückzieht, bleibt der Regierung der Vereinigten Staaten keine andere Wahl, die sich mit der Würde und der Ehre der Vereinigten Staaten vereinbaren ließe, als den Weg einzuschlagen, den sie in ihrer Note vom 8. April für den Fall ankündigte, daß Deutschland seine U-Bootmethoden nicht aufgeben wollte.

Ich beauftragte deshalb *Lansing, Bernstorff* mitzuteilen, daß die diplomatischen Beziehungen zu Deutschland abgebrochen sind, daß der amerikanische Botschafter in Berlin sofort abberufen werde und daß *Bernstorff* die Pässe ausgehändigt werden. Trotz dieses unerwarteten Vorgehens der deutschen Regierung und dieses plötzlichen, tief bedauerlichen Widerrufs ihrer unserer Regierung gegebenen Versicherungen, in einem Augenblick der kritischsten Spannung in den zwischen den beiden Regierungen bestehenden Beziehungen, weigere ich mich zu glauben, daß die deutschen Behörden tatsächlich das zu tun beabsichtigen, wozu sie sich, wie sie uns bekanntgegeben haben, berechtigt halten. Ich bringe es nicht über mich, zu glauben, daß sie auf die alte Freundschaft der beiden Völker oder auf ihre feierliche Verpflichtung keine Rücksicht nehmen und in mutwilliger Durchführung eines unbarmherzigen Flottenprogramms amerikanische Schiffe und Menschenleben vernichten werden. Nur wirkliche offenkundige Taten von ihrer Seite können mich das glauben machen. Wenn mein eingewurzeltes Vertrauen in ihre Besonnenheit und ihre kluge Umsicht sich unglückseligerweise als unbegründet herausstellen sollte, wenn amerikanische Schiffe oder Menschenleben in achtloser Uebertretung des Völkerrechts und der Gebote der Menschlichkeit geopfert werden sollten, so werde ich den Kongreß um die Ermächtigung ersuchen, die Mittel anwenden zu können, die notwendig sind, um unsere Seeleute und Bürger bei der Verfolgung ihrer friedlichen und legitimen Unternehmungen auf dem offenen Meere zu schützen. Ich kann nicht weniger tun. Ich nehme es als ausgemacht an, daß alle neutralen Regierungen denselben Weg einschlagen werden.

Wir wünschen keinen kriegerischen Konflikt (wörtlich: *Hostile conflict*) mit der deutschen Regierung. Wir sind aufrichtige Freunde des deutschen Volkes und wünschen ernstlich, den Frieden mit der Regierung zu erhalten,

die sein Sprachorgan ist. Wir werden nicht glauben, daß sie uns feindlich gesinnt ist, außer, wenn es so weit kommt, daß wir es glauben müssen, und wir beabsichtigen nichts anderes, als eine vernünftige Verteidigung der unzweifelhaften Rechte unseres Volkes. Wir haben keine egoistischen Absichten. Wir suchen nur den uralten Grundsätzen unseres Volkes treu zu bleiben, unser Recht auf Freiheit, Gerechtigkeit und ein unbelästigtes Leben zu schützen. Das sind Grundlagen des Friedens, nicht des Krieges. Möge Gott es fügen, daß wir nicht durch Akte vorsätzlicher Ungerechtigkeit von seiten der Regierung Deutschlands dazu herausgefordert werden, sie zu verteidigen!

Nr. 2016. Amerikanische Note vom 4. (5.) Februar 1917 an die Neutralen*).

Im Auftrage meiner Regierung beehre ich mich, Eurer Exzellenz bekanntzugeben, daß die Regierung der Vereinigten Staaten angesichts der neuerlichen Ankündigung der deutschen Regierung, daß sie den hemmungslosen Unterseebootkrieg zu erneuern gedenke, keine Alternative hat, als den Weg zu verfolgen, den sie in ihrer Note an die deutsche Regierung vom 18. April 1916 niedergelegt hat. Meine Regierung wird daher den amerikanischen Botschafter und sein Gefolge aus Berlin abberufen und ungesäumt dem deutschen Botschafter in Washington Pässe für ihn und sein Gefolge einhändigen.

Ich bin ferner beauftragt, zu sagen, daß der Präsident zögert, zu glauben, daß Deutschland tatsächlich die Drohungen gegen den neutralen Handel ausführen wird; daß aber der Präsident, wenn dies doch geschehen sollte, vom Kongreß Vollmacht verlangen wird, die Kraft der Nation zu benutzen zum Schutze amerikanischer Bürger, die in friedlichen und gesetzlichen Unternehmungen auf dem offenen Meer beschäftigt sind. Nach der Ansicht des Präsidenten ist der von ihm eingeschlagene Weg vollständig konform den Grundsätzen, die er in seiner Adresse an den Senat am 22. Januar verkündet hat. Der Präsident glaubt daher, daß es dem Weltfrieden dienlich sein wird, wenn die anderen neutralen Mächte es möglich finden, eine ähnliche Aktion zu ergreifen, wie sie von der Regierung der Vereinigten Staaten ergriffen worden ist.

Nr. 2017. Antwort Schwedens) vom 8. Februar 1917 an Amerika hinsichtlich des Vorschlags Wilsons an die Neutralen anläßlich der Erklärung des unbeschränkten U-Bootkrieges.** (Norddeutsche Allgemeine Zeitung vom 10. Februar 1917, Erste Ausgabe, Nr. 40.)

Indem ich Bezug nehme auf Ihren Brief vom 5. Februar, durch den Sie der königlichen Regierung die Ansicht *Wilsons* mitteilten, daß es im Interesse des Friedens angezeigt sei, aus Anlaß der neuen Seesperre, die von der deutschen Regierung erklärt wurde, eine der Haltung der Vereinigten Staaten ähnliche Haltung einzunehmen, habe ich die Ehre, Ihnen folgendes zur

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*) Aus besonderer Quelle. Herausgeber.

**) S. auch: Die völkerrechtlichen Urkunden des Weltkrieges. Herausgegeben von *Th. Niemeyer* und *K. Strupp*. III. Band. Jahrbuch des Völkerrechts V. Band. Seite 250 (Nr. 1801). Herausgeber.

Kenntnis zu bringen: Die Politik, die die Regierung des Königs während des Krieges befolgte, ist streng unparteiische Neutralität. Die Regierung tat alles ihr mögliche, um treu alle Pflichten zu erfüllen, die ihr diese Politik auferlegt hat. Gleichzeitig machte sie, soweit möglich, die Rechte, die daraus abzuleiten sind, geltend. Um ein praktisches Ergebnis zu erzielen und die Prinzipien des Völkerrechts aufrechtzuerhalten, wandte sich die Regierung mehrmals an die neutralen Mächte, um zu einem Zusammenarbeiten zu dem genannten Zwecke zu gelangen. Insbesondere unterließ es die Regierung nicht, der Regierung der Vereinigten Staaten Vorschläge zu diesem Zwecke zu unterbreiten. Mit Bedauern stellte die Regierung des Königs fest, daß die Interessen der Vereinigten Staaten ihnen nicht erlaubten, sich diesen Vorschlägen anzuschließen. Die so von der Regierung des Königs gemachten Vorschläge führten zu einem System von gemeinsamen Maßnahmen zwischen Schweden, Dänemark und Norwegen gegenüber den beiden kriegführenden Parteien. In der Politik, die die Regierung des Königs zur Aufrechterhaltung ihrer Neutralität und Sicherung der legitimen Rechte des Landes befolgt, ist die Regierung des Königs, die ein Herz hat für die unbeschreiblichen Leiden, die von Tag zu Tag grausamer auf der ganzen Menschheit lasten, bereit, jede sich darbietende Gelegenheit zu ergreifen, um zur Herbeiführung eines nahen dauernden Friedens beizutragen. Sie beeilte sich daher, sich der vollen Initiative des Präsidenten anzuschließen zu dem Zwecke, die Möglichkeiten zur Herbeiführung von Verhandlungen zwischen den Kriegführenden zu prüfen. Der Vorschlag, der den Gegenstand des gegenwärtigen Schriftwechsels bildet, gibt als Ziel die Abkürzung des Kriegsübels an; aber die Regierung der Vereinigten Staaten wählte als Mittel, zu diesem Zweck zu kommen, ein Verfahren, das durchaus im Gegensatz zu den Grundsätzen steht, die bis zur gegenwärtigen Stunde die Politik der königlichen Regierung leiteten. Die Regierung des Königs, die sich stützt auf die Meinung der Nation, wie sie durch die einstimmigen Resolutionen ihrer Vertreter dargetan ist, will zukünftig wie in der Vergangenheit den Weg der Neutralität und Unparteilichkeit gegenüber beiden kriegführenden Parteien weiter verfolgen und wird nur dann ihn zu verlassen geneigt sein, wenn die Lebensinteressen des Landes und die Würde der Nation sie zwingen, ihre Politik zu ändern.

gez. *K. A. Wallenberg.*

Nr. 2018. Erweiterung der englischen Seesperre.

a) Order in Council vom 16. Februar 1917.

(The London Gazette vom 23. Februar 1917.)

At the Court at Buckingham Palace, the 16th day of February, 1917.

Present,

The King's Most Excellent Majesty in Council.

Whereas by an Order in Council dated the 11th day of March, 1915, His Majesty was pleased to direct certain measures to be taken against the commerce of the enemy:

And whereas the German Government has now issued a memorandum declaring that from the 1st February, 1917, all sea traffic will be prevented in certain zones therein described adjacent to Great Britain and France and Italy, and that neutral ships will navigate the said zones at their own risk:

And whereas similar directions have been given by other enemy Powers:

And whereas the orders embodied in the said memorandum are in flagrant contradiction with the rules of international law, the dictates of humanity, and the treaty obligations of the enemy:

And whereas such proceedings on the part of the enemy render it necessary for His Majesty to adopt further measures in order to maintain the efficiency of those previously taken to prevent commodities of any kind from reaching or leaving the enemy countries, and for this purpose to subject to capture and condemnation vessels carrying goods with an enemy destination or of enemy origin unless they afford unto the forces of His Majesty and His Allies ample opportunities of examining their cargoes, and also to subject such goods to condemnation:

His Majesty is therefore pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, that the following directions shall be observed in respect of all vessels which sail from their port of departure after the date of this Order: —

1. A vessel which is encountered at sea on her way to or from a port in any neutral country affording means to access to the enemy territory without calling at a port in British or Allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination, and, if necessary, for adjudication before the Prize Court.

2. Any vessel carrying goods with an enemy destination, or of enemy origin, shall be liable to capture and condemnation in respect of the carriage of such goods; provided that, in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo, no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination, and no such presumption as is laid down in Article 1 shall arise.

3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation.

4. Nothing in this Order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this Order.

5. This Order is supplemental to the Orders in Council of the 11th day of March, 1915, and the 10th day of January, 1917, for restricting the commerce of the enemy.

Almeric FitzRoy.

b) Mitteilung an Holland.

(Norddeutsche Allgemeine Zeitung Nr. 87, Zweite Ausgabe vom 29. März 1917.)

Haag, 28. März 1917.

Das Ministerium des Aeußern machte bekannt, daß die britische Regierung mitgeteilt hat, daß vom 1. April ab das von England für abgeschlossen erklärte Seegebiet erweitert wird. Von diesem Datum an wird es mit Ausnahme der dänischen und niederländischen Territorialgewässer ein Gebiet umfassen, das folgendermaßen begrenzt ist. Im Norden durch den Parallelkreis von 56 Grad nördlicher Breite westlich von einem Punkte, der drei Seemeilen von der Küste von Jütland liegt, im Westen durch die Verbindungslinie der folgenden Punkte: 56 Grad nördlicher Breite und 6 Grad östlicher Länge, 54 Grad 45 Min. nördlicher Breite und 4 Grad 30 Min. östlicher Länge, sowie 53 Grad 23 Min. nördlicher Breite und 5 Grad 1 Min. östlicher Länge, im Süden durch die Linie, die durch den letztgenannten und einen in 53 Grad 25 Min. nördlicher Breite und 5 Grad 5 Sek. östlicher Länge gelegenen Punkt verläuft und dann im Osten der Grenze der niederländischen Territorialgewässer folgt.

Nr. 2019. Amerikanisches Aide-Mémoire vom 18. Februar 1917 über die von der österreichisch-ungarischen Regierung in der Frage des Unterseebootkrieges befolgte Politik*).

Wien, 18. Februar 1917.

In der Note Nr. 4167 vom 9. Dezember 1915, betreffend die „Ancona“-Angelegenheit, hat die amerikanische Regierung die Gesichtspunkte niedergelegt, von welchen sie sich hinsichtlich der Tätigkeit von Unterseebooten im Seekriege leiten ließ. Diese Gesichtspunkte waren in einem früheren Zeitpunkte gegenüber der kaiserlich deutschen Regierung klar zum Ausdrucke gekommen und war die Regierung der Vereinigten Staaten der Meinung, daß die k. u. k. Regierung von denselben Kenntnis erhalten hatte. Die k. u. k. Regierung antwortete mit der Note Nr. 5735 vom 14. Dezember 1915, in welcher sie erklärte, daß sie weder hinlängliche Kenntnis von dem zwischen den Vereinigten Staaten und Deutschland stattgehabten Gedankenaustausche habe, noch der Ansicht sei, daß selbst eine vollständige Kenntnis derselben für die Behandlung des „Ancona“-Falles hinreichend sei, nachdem diese Frage einen verschiedenen Charakter aufweise. Nichtsdestoweniger erklärte das k. u. k. Ministerium des Aeußern in seiner Note Nr. 5949 vom 29. Dezember 1915 (Antwort auf die Note der amerikanischen Botschaft vom 21. Dezember 1915, Nr. 4307):

„Was das in der sehr geschätzten Note aufgestellte Prinzip anbelangt, daß feindliche Privatschiffe, insolange sie nicht fliehen oder Widerstand leisten, nicht vernichtet werden dürfen, bevor die Passagiere in Sicherheit gebracht worden sind, so ist die k. u. k. Regierung in der Lage, im wesentlichen dieser Auffassung des Kabinettes von Washington zuzustimmen“.

Weiters hat die österreichisch-ungarische Regierung gelegentlich der Versenkung des Dampfschiffes „Persia“ im Januar 1916 erklärt, daß sie, obwohl sie über diesen Zwischenfall nicht informiert sei, sich von den Prinzipien, denen sie in der „Ancona“-Angelegenheit beigepflichtet habe, leiten lassen würde, falls es sich herausstellen sollte, daß Oesterreich-Ungarn in dieser Sache eine Verantwortung trifft.

In Uebereinstimmung mit der am 10. Februar 1916 erfolgten Mitteilung der deutschen Regierung erklärte die österreichisch-ungarische Regierung, daß „jedwedes, zu welchem Zwecke auch immer mit Geschütz bewaffnete Handelsschiff durch diesen Umstand allein den Charakter eines friedlichen Fahrzeuges einbüßt“ und daß „in Anbetracht dieser Umstände die österreichisch-ungarischen Seestreitkräfte den Befehl erhalten hätten, derartige Schiffe als Kriegsschiffe zu behandeln“.

In Gemäßheit mit dieser Erklärung wurden — vermutlich durch österreichisch-ungarische Unterseeboote — im mittelländischen Meere Schiffe versenkt, auf denen sich amerikanische Bürger befanden. Einige von diesen Schiffen, z. B. die englischen Dampfschiffe „Secondo“ und „Welsh Prince“, wurden warnungslos von Unterseebooten unter österreichisch-ungarischer Flagge torpediert.

Der amerikanische Botschafter in Wien hat über diese drei Fälle Erkundigungen eingezogen, aber bisher keine einschlägige Antwort erhalten.

Gleichzeitig mit der deutschen Erklärung vom 31. Januar 1917, welche in gewissen Teilen der See an den Küsten der Länder der Entente durch den Unterseebootkrieg gefährdete Zonen aufstellte, hat die k. u. k. Regierung mitgeteilt, daß Oesterreich-Ungarn und seine Verbündeten vom 1. Februar 1917

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*) Aus besonderer Quelle. Herausgeber.

an „jede Schiffahrt innerhalb eines bestimmten Sperrgebietes durch alle Mittel verhindern würden“.

Aus dem Vorstehenden kann wohl geschlossen werden, daß die im Falle des Dampfers „Ancona“ erteilte und gelegentlich der Erörterung des Falles „Persia“ bestätigte Zusicherung in allen wesentlichen Beziehungen die gleiche ist, welche in der Note der kaiserlich deutschen Regierung vom 4. Mai 1916 enthalten ist, und zwar: „In Beobachtung der allgemeinen völkerrechtlichen Grundsätze über die Anhaltung, Durchsuchung und Zerstörung von Handelsschiffen werden solche Schiffe weder inner- noch außerhalb des als Seekriegsgebiet erklärten Teiles des Meeres ohne Warnung und ohne Rettung der Menschenleben versenkt werden, es sei denn, daß diese Schiffe zu fliehen oder Widerstand zu leisten versuchen“ und daß diese Zusicherung durch die einander folgenden Erklärungen der österreichisch-ungarischen Regierung vom 10. Februar 1916 und vom 31. Januar 1917 mehr oder weniger abgeändert worden ist.

Da infolgedessen die Regierung der Vereinigten Staaten über die Deutung, welche diesen Erklärungen, insbesondere der letzteren, beizulegen ist, Zweifel hegt, wünscht sie, endgültig und klar darüber unterrichtet zu werden, welchen Standpunkt die k. u. k. Regierung unter diesen Umständen hinsichtlich der Führung des Unterseebootkrieges einnimmt und ob die in den Fällen der „Ancona“ und der „Persia“ erteilten Zusicherungen als abgeändert oder zurückgezogen anzusehen sind.

Nr. 2020. Antwort Oesterreich-Ungarns vom 5. März 1917 auf das Aide-Mémoire der amerikanischen Botschaft in Wien vom 18. Februar 1917. (Norddeutsche Allgemeine Zeitung Nr. 65, Zweite Ausgabe vom 7. März 1917.)

Wien, 5. März.

Der Minister des Aeußern hat dem Botschafter der Vereinigten Staaten von Amerika ein *Aide-Mémoire* übergeben, welches lautet:

Dem *Aide-Mémoire* der amerikanischen Botschaft in Wien vom 18. Februar l. J. hat das k. u. k. Ministerium des Aeußern entnommen, daß das Washingtoner Kabinett angesichts der von der k. u. k. Regierung am 10. Februar v. J. und am 31. Januar l. J. abgegebenen Erklärungen Zweifel darüber hegt, welche Haltung Oesterreich-Ungarn bei der Führung des Unterseebootkrieges fortan einzunehmen gedenke, und ob die Zusicherung, welche die k. u. k. Regierung dem Washingtoner Kabinett im Laufe der Verhandlungen über die Fälle der Schiffe „Ancona“ und „Persia“ erteilt hat, nicht etwa durch die besagten Erklärungen abgeändert oder zurückgezogen worden sei.

Dem Wunsche der Bundesregierung, daß diese Zweifel durch eine endgültige, klare Aeußerung behoben werden, ist die k. u. k. Regierung gern bereit zu entsprechen. Es sei ihr hierbei gestattet, vorerst in aller Kürze die von den Ententemächten in der Führung des Seekrieges geübten Methoden zu erörtern, weil diese den Ausgangspunkt des von Oesterreich-Ungarn und seinen Verbündeten ins Werk gesetzten verschärften Unterseebootkrieges bilden und von hier aus auch helles Licht auf die Haltung fällt, welche die k. u. k. Regierung in den sich ergebenden Fragen bisher eingenommen hat.

Als Großbritannien in den Kampf gegen die Mittelmächte eintrat, waren erst wenige Jahre seit jener denkwürdigen Zeit verstrichen, da es im Verein mit den übrigen Staaten im Haag die Fundamente eines modernen Seekriegsrechtes zu legen begonnen hatte. Bald darauf hatte die englische Regierung die Vertreter der großen Seemächte in London versammelt, um das Haager

Werk vornehmlich im Sinne eines billigen Ausgleiches zwischen den Interessen der Kriegführenden und der Neutralen weiter auszubauen. Der ungeahnten Erfolge dieser Bestrebungen, welche nichts Geringeres erzielten, als die einvernehmliche Festsetzung von Rechtsnormen, die geeignet waren, dem Grundsatze der Meeresfreiheit und den Interessen der Neutralen auch in Kriegszeiten Geltung zu verschaffen, sollten sich die Völker nicht lange erfreuen.

Kaum hatte sich das Vereinigte Königreich entschlossen, am Kriege teilzunehmen, als es auch schon die Schranken zu durchbrechen begann, die ihm die Normen des Völkerrechts setzen. Während die Mittelmächte sogleich bei Beginn des Krieges erklärt hatten, sich an die Londoner Deklaration, welche auch die Unterschrift des britischen Vertreters trug, halten zu wollen, warf England die wichtigsten Bestimmungen derselben über Bord. Im Bestreben, die Mittelmächte von den Zufuhren zur See abzuschneiden, erweiterte es Schritt für Schritt die Liste der Bannwaren, bis nichts mehr von all dem darauf fehlte, dessen die Menschen heute zur Fristung des Lebens bedürfen. Sodann verhängte Großbritannien über die Küsten der Nordsee, die auch für den Seehandel Oesterreich-Ungarns ein wichtiges Durchgangstor bilden, eine von ihm als „Blockade“ bezeichnete Sperre, um allen Waren den Eintritt nach Deutschland zu wehren, die auf der Liste der Banngüter noch fehlten, sowie um jeden Schiffsverkehr der Neutralen mit jenen Küsten zu unterbinden und jegliche Ausfuhr über sie zu verhindern. Daß diese Sperre in grellstem Widerspruch zu den hergebrachten und durch internationale Verträge festgelegten Normen des Blockaderechts steht, hat gerade der Herr Präsident der Vereinigten Staaten von Amerika in Worten dargetan, die in der Geschichte des Völkerrechts fortleben werden. Durch die rechtswidrige Behinderung der Ausfuhr aus den Mittelmächten gedachte Großbritannien zahllose Fabriken und Betriebe, die arbeitsame, hochentwickelte Völker im Herzen Europas geschaffen hatten, stillzulegen, ihre Arbeiter zum Feiern und damit zu Auflehnungen und zum Aufruhr zu bringen. Und als Oesterreich-Ungarns südlicher Nachbar in die Reihen der Feinde der Mittelmächte trat, war sein erstes, die gesamten Küsten des Gegners für blockiert zu erklären, freilich dem Beispiele seiner Bundesgenossen folgend, unter Mißachtung der Rechtsregeln, an deren Schaffung Italien kurz vorher werktätigen Anteil genommen hatte. Oesterreich-Ungarn unterließ nicht, den neutralen Mächten sogleich darzulegen, daß diese Blockade jeder Rechtswirksamkeit entbehre.

Ueber zwei Jahre haben die Mittelmächte gezögert, dann erst, und nachdem sie das Für und Wider lange und reichlich erwogen hatten, schritten sie daran, Gleiches mit Gleichem zu vergelten und dem Gegner zur See an den Leib zu rücken. Als einzige der Kriegführenden, die alles getan hatten, um die Geltung der Verträge zu sichern, die den Neutralen Meeresfreiheit gewährleisten sollten, empfanden sie bitteren Herzens den Zwang der Stunde, der sie hieß, diese Freiheit zu verletzen, aber sie taten den Schritt, um eine gebieterische Pflicht gegen ihre Völker zu erfüllen, und in der Ueberzeugung, daß er geeignet sei, der Freiheit der Meere schließlich zum Siege zu verhelfen. Die Erklärungen, die sie am letzten Januartage dieses Jahres erließen, richten sich nur scheinbar wider die Rechte der Neutralen; in Wahrheit dienen sie der Wiederherstellung dieser Rechte, welche die Feinde unablässig verletzt haben, und die sie, wenn sie Sieger wären, für immer vernichten würden. So künden die Tauchboote, welche Englands Küsten umkreisen, den Völkern, die der See bedürfen — und welche bedürften ihrer nicht —, daß der Tag nicht mehr fern ist, da die Flaggen aller Staaten im Glanz der neu errungenen Freiheit friedlich über den Meeren wehen werden.

Es darf wohl die Hoffnung gehegt werden, daß diese Kunde überall, wo neutrale Völker wohnen, Widerhall finden und daß sie insbesondere vom großen Volk der Vereinigten Staaten werde verstanden werden, dessen be-

rufenster Vertreter im Laufe des Krieges mit flammenden Worten für die Freiheit des Meeres als der Straße aller Nationen eingetreten ist. Wenn sich Volk und Regierung der Union vor Augen halten, daß die von Großbritannien verhängte „Blockade“ dazu bestimmt ist, nicht nur die Mittelmächte durch Hunger niederzuzwingen, sondern letzten Endes die Meere seiner Herrschaft zu unterwerfen und auf diesem Wege seine Vogtei über alle Nationen zu begründen, während umgekehrt die Absperrung Englands und seiner Verbündeten nur dazu dient, diese Mächte einem Frieden in Ehren zugänglich zu machen und allen Nationen die Freiheit der Schiffahrt und des Seehandels und damit ein gesichertes Dasein zu verbürgen, dann ist die Frage, welche der beiden Kriegsparteien das Recht auf ihrer Seite hat, auch schon entschieden. Wenn es den Mittelmächten auch fern liegt, in ihrem Kampf um Bundesgenossen zu werben, so glauben sie doch darauf Anspruch erheben zu dürfen, daß die Neutralen ihr Bestreben würdigen, die Grundsätze des Völkerrechts und der Gleichberechtigung der Nationen im Interesse aller wiederaufleben zu lassen.

Wenn nun die k. u. k. Regierung daran geht, die im bezogenen *Aide-Mémoire* vom 18. Februar d. J. gestellte Frage zu beantworten, so sei zunächst bemerkt, daß sie sich im Notenwechsel, der die Fälle der „Ancona“ und „Persia“ betraf, darauf beschränkt hatte, zu den konkreten Fragen Stellung zu nehmen, die sich jeweils ergeben hatten, ohne ihre grundsätzliche Rechtsauffassung darzulegen. Sie hat sich aber in der auf den Fall der „Ancona“ bezüglichen Note vom 29. Dezember 1915 vorbehalten, die schwierigen völkerrechtlichen Fragen, die mit dem Unterseebootkrieg zusammenhängen, in einem späteren Zeitpunkt zur Erörterung zu bringen. Wenn sie nunmehr auf diesen Vorbehalt zurückkommt und die Frage der Versenkung feindlicher Schiffe, auf die jenes *Aide-Mémoire* anspielt, einer kurzen Besprechung unterzieht, so leitet sie hierbei der Wunsch, der amerikanischen Regierung darzutun, daß sie an der von ihr erteilten Zusicherung nach wie vor unverrückbar festhält, sowie das Bestreben, durch Klärung jener wichtigsten aus dem Unterseebootkriege sich ergebenden, weil an die Gebote der Menschlichkeit rührenden Frage, Mißverständnissen zwischen der Monarchie und der amerikanischen Union vorzubeugen.

Vor allem möchte die k. u. k. Regierung betonen, daß auch ihrer Ansicht nach die von der amerikanischen Regierung aufgestellte und auch in mehreren gelehrten Schriften vertretene These, daß feindliche Handelsschiffe, abgesehen von Fällen des Fluchtversuchs und des Widerstandes, nicht vernichtet werden dürfen, ohne daß für die Sicherheit der Personen an Bord gesorgt würde, sozusagen den Kern der ganzen Materie bildet. Von einer höheren Warte betrachtet, läßt sich diese These allerdings in einen weiteren gedanklichen Zusammenhang eingliedern und solcher Art auch ihr Anwendungsgebiet genauer abstecken. Man kann aus den Geboten der Menschlichkeit, welche die k. u. k. Regierung und das Washingtoner Kabinett in gleicher Weise zur Richtschnur nehmen, den allgemeinen Grundsatz ableiten, daß bei Ausübung des Rechts der Vernichtung feindlicher Handelsschiffe der Verlust an Menschenleben, soweit irgend möglich, vermieden werden soll. Diesem Grundsatz kann der Kriegführende nur dadurch gerecht werden, daß er vor Ausübung des Rechts eine Warnung erläßt. Er kann hierbei den Weg einschlagen, den die besagte These der Regierung der Vereinigten Staaten weist, wonach der Befehlshaber des Kriegsschiffs eine Warnung an das zu versenkende Fahrzeug selbst richtet, damit sich die Besatzung und die Passagiere noch im letzten Augenblick in Sicherheit bringen können, oder aber die Regierung des kriegführenden Staates kann, wenn sie dies als unabweisliche Kriegsnotwendigkeit erkannt hat, eine Warnung mit voller Wirkung schon vor der Ausfahrt des Schiffes erlassen, welches versenkt werden soll, oder

schließlich: sie kann sich, wenn sie umfassende Maßnahmen zur Bekämpfung des feindlichen Seehandels ins Werk setzt, einer allgemeinen, für alle in Betracht kommenden feindlichen Schiffe bestimmten Warnung bedienen.

Daß der Grundsatz, nach dem für die Sicherheit der Personen an Bord Sorge zu tragen ist, Ausnahmen erleidet, hat die Regierung der Vereinigten Staaten selbst anerkannt. Die k. u. k. Regierung möchte aber glauben, daß die warnungslose Vernichtung nicht nur dann zulässig ist, wenn das Schiff flieht oder Widerstand leistet. Es scheint ihr, um nur ein Beispiel anzuführen, auch der Charakter des Schiffes selbst in Betracht gezogen werden zu müssen. Handels- oder sonstige Privatschiffe, welche sich in den Dienst der Kriegführung stellen, etwa als Transport- oder Avisoschiffe, oder welche eine militärische Besatzung oder Waffen an Bord führen, um Feindseligkeiten irgendwelcher Art zu begehen, dürfen nach dem geltenden Rechte wohl ohne weiteres vernichtet werden. Des Falles, daß der Kriegführende jeder Rücksicht auf Menschenleben entbunden ist, wenn sein Gegner feindliche Handelsschiffe ohne jede vorgängige Warnung versenkt, wie dies in den bereits wiederholt gerügten Fällen der Schiffe „Elektra“, „Dubrovnik“, „Zagreb“ usw. zutraf, braucht die k. u. k. Regierung nicht zu gedenken, da sie in dieser Hinsicht trotz ihres unbestreitbaren Rechtes niemals Gleiches mit Gleichem vergolten hat. Im ganzen Verlaufe des Krieges haben die österreichisch-ungarischen Kriegsschiffe nicht ein einziges feindliches Handelsschiff ohne vorherige, wenn auch generelle, Warnung vernichtet.

Die mehrerwähnte These der Bundesregierung läßt auch mehrere Deutungen zu, insofern nämlich, als es danach fraglich ist, ob, wie von manchen Seiten behauptet wird, nur ein bewaffneter Widerstand die Vernichtung des Schiffes mit Personen an Bord rechtfertige, oder auch ein Widerstand anderer Art, wie er etwa dann gegeben ist, wenn die Besatzung es geflissentlich unterläßt, die Passagiere auszubooten (Fall „Ancona“), oder wenn die Passagiere selbst die Ausbootung verweigern. Nach der Meinung der k. u. k. Regierung ist auch in Fällen der letzten Art die Vernichtung des gewarnten Schiffes ohne Rettung der Personen an Bord zulässig, da es andernfalls in die Hände des Fahrgastes gelegt wäre, das den Kriegführenden zustehende Recht der Versenkung zunichte zu machen. Uebrigens darf auch darauf hingewiesen werden, daß nicht einmal darüber Einmütigkeit besteht, in welchen Fällen eine Vernichtung feindlicher Handelsschiffe überhaupt zulässig ist.

Eine Verpflichtung, die Warnung unmittelbar vor dem Versenken des Schiffes zu erlassen, führt nach Ansicht der k. u. k. Regierung einerseits zu Härten, die vermieden werden könnten, andererseits ist sie aber auch unter Umständen geeignet, berechtigten Interessen der Kriegführenden Abbruch zu tun. Zunächst ist nämlich nicht zu verkennen, daß die Rettung der Personen auf See fast allemal dem blinden Ungefähr anheimgestellt ist, da nur die Wahl bleibt, sie entweder an Bord des jeder feindlichen Einwirkung ausgesetzten Kriegsschiffes zu nehmen oder in kleinen Booten den Gefahren der Elemente preiszugeben, und daß es daher den Grundsätzen der Menschlichkeit weit besser entspricht, die Personen durch eine rechtzeitig erlassene Warnung von der Benutzung gefährdeter Schiffe abzuhalten. Des weiteren aber konnte sich die k. u. k. Regierung trotz reiflicher Ueberprüfung aller in Betracht kommenden Rechtsfragen nicht davon überzeugen, daß Angehörige neutraler Staaten einen Anspruch darauf besitzen, auf feindlichen Schiffen unbehelligt zu reisen.

Der Grundsatz, daß die Neutralen auch in Kriegszeiten die Vorteile der Meeresfreiheit genießen, gilt nur für neutrale Schiffe, nicht auch für neutrale Personen an Bord feindlicher Schiffe. Denn die Kriegführenden sind bekanntlich berechtigt, den feindlichen Schiffsverkehr, soweit sie es vermögen, zu unterbinden. Im Besitz der erforderlichen Kriegsmittel dürfen

sie hierbei, wenn sie es zur Erreichung ihrer Kriegsziele für nötig erachten, feindlichen Handelsschiffen das Befahren der See bei sonstiger sofortiger Vernichtung untersagen, wenn sie nur diese ihre Absicht vorher ankündigen, damit jedermann, ob Feind oder Neutraler, in die Lage komme, eine Gefährdung seines Lebens zu vermeiden. Selbst wenn sich aber über die Berechtigung eines derartigen Vorgehens Zweifel ergeben sollten und der Gegner etwa mit Vergeltung drohen würde, wäre dies eine Angelegenheit, die unter den Kriegführenden allein auszutragen ist, die anerkanntermaßen berechtigt sind, die hohe See zum Schauplatz ihrer militärischen Unternehmungen zu machen, jede Störung dieser Unternehmungen abzuwehren und souverän zu entscheiden, welche Maßnahmen wider die feindliche Schiffahrt zu ergreifen seien. Die Neutralen haben in solchem Falle kein anderes legitimes Interesse und daher keinen anderen Rechtsanspruch, als daß ihnen ein Kriegführender das an den Feind gerichtete Verbot rechtzeitig bekannt gibt, damit sie es vermeiden können, ihre Personen und ihr Eigen feindlichen Schiffen anzuvertrauen.

Die k. u. k. Regierung darf wohl annehmen, daß das Washingtoner Kabinett den vorstehenden, ihrer vollen Ueberzeugung nach unanfechtbaren Ausführungen zustimmt, da eine Bestreitung ihrer Richtigkeit ohne Zweifel darauf hinauslaufen würde, daß es, was der Ansicht der Bundesregierung sicher nicht entspricht, den Neutralen freistehe, sich in die militärischen Operationen der Kriegführenden einzumengen, ja, letzten Endes sich geradezu zum Richter darüber aufzuwerfen, welche Kriegsmittel gegen den Feind in Anwendung gebracht werden dürfen. Auch schiene ein schreiendes Mißverständnis gegeben, wenn eine neutrale Regierung, nur um es ihren Angehörigen zu ermöglichen, auf feindlichen Schiffen zu reisen, während sie ebensogut, ja, mit weit größerer Sicherheit, neutrale Schiffe benutzen könnten, einer kriegführenden Macht, die vielleicht um ihr Dasein kämpft, in den Arm fiele, nicht zu sprechen davon, daß den schwersten Mißbräuchen Tür und Tor geöffnet würde, wollte man einen Kriegführenden zwingen, die Waffen vor jedem Neutralen zu senken, dem es gerade beliebt, sich auf seiner Geschäfts- oder Vergnügungsreise der feindlichen Fahrzeuge zu bedienen. Niemals ist auch nur der leiseste Zweifel darüber wach geworden, daß neutrale Staatsangehörige allen Schaden selbst zu tragen haben, den sie dadurch erleiden, daß sie zu Lande ein Gebiet betreten, wo kriegerische Operationen stattfinden. Es liegt augenscheinlich kein Grund vor, für den Seekrieg eine andere Norm gelten zu lassen, zumal die zweite Friedenskonferenz den Wunsch geäußert hat, die Mächte mögen bis zur Zeit, da der Seekrieg eine vertragsmäßige Regelung gefunden haben würde, das für den Landkrieg geltende Recht, soweit als möglich, auch im Seekriege anwenden.

Im Sinne des Vorausgeschickten erleidet die Regel, daß eine Warnung an das zu versenkende Schiff selbst zu richten ist, Ausnahmen verschiedener Art. Unter gewissen Umständen, wie beispielsweise in den von der Bundesregierung angeführten Fällen der Flucht und des Widerstandes, darf ein Schiff ohne jede Warnung vernichtet werden, in anderen bedarf es der Warnung vor Ausfahrt des Schiffes. Die k. u. k. Regierung darf sonach feststellen, daß sie, wie immer sich das Washingtoner Kabinett zu den einzelnen hier aufgeworfenen Fragen stellen mag, doch gerade, was den Schutz der Neutralen gegen Gefährdung ihres Lebens anlangt, mit der Bundesregierung im Wesen eines Sinnes ist. Sie hat sich aber nicht daran genügen lassen, im Verlaufe des jetzigen Krieges die von ihr vertretene Auffassung in die Tat umzusetzen, sondern darüber hinausgehend ihr Verhalten mit peinlicher Sorgfalt der vom Washingtoner Kabinett aufgestellten These angepaßt, obwohl die von ihr erteilte Zusicherung nur dahin gelautet hatte, daß sie der Anschauung der Bundesregierung im wesentlichen beizupflichten vermag.

Mit besonderer Genugtuung würde es die k. u. k. Regierung begrüßen, wenn sich das Washingtoner Kabinett geneigt fände, sie in ihrem von wärmster Menschenfreundlichkeit getragenen Bestreben, amerikanische Bürger vor Gefährdung auf See zu bewahren, durch Belehrung und Warnung seiner Schutzbefohlenen zu unterstützen.

Was nun die Zirkularverbalnote vom 10. Februar v. J., betreffend die Behandlung bewaffneter feindlicher Kauffahrteischiffe anlangt, muß die k. u. k. Regierung allerdings feststellen, daß sie, wie auch im vorstehenden angedeutet ist, der Ansicht ist, die Bewaffnung von Handelsfahrzeugen auch nur zum Zweck der Verteidigung gegen die Ausübung des Beuterechtes sei im modernen Völkerrecht nicht begründet. Ein Kriegsschiff ist in aller Regel verpflichtet, einem feindlichen Handelsfahrzeug in friedlicher Form zu begegnen. Es hat seine Fahrt mittels bestimmter Zeichen anzuhalten, mit dem Kapitän in Verkehr zu treten, die Bordpapiere zu prüfen und ein Protokoll, gegebenenfalls das Inventar, aufzunehmen usw. Die Erfüllung dieser Pflichten setzt aber wohl als selbstverständlich voraus, daß das Kriegsschiff volle Gewißheit darüber besitzt, daß ihm das Handelsschiff seinerseits friedlich begegne. Eine solche Gewißheit besteht jedoch zweifellos nicht, wenn das Handelsschiff eine Bewaffnung führt, die zur Bekämpfung des Kriegsschiffes hinreicht. Einem Kriegsschiff kann doch schwerlich zugemutet werden, unter den Mündungen feindlicher Kanonen seines Amtes zu walten, mögen die Kanonen zu welchem Zweck auch immer an Bord gebracht worden sein, ganz zu schweigen von der Tatsache, daß die Handelsschiffe der Ententemächte trotz aller gegenteiligen Beteuerungen erwiesenermaßen zu Angriffszwecken mit Geschützen versehen sind und sich ihrer zu solchen Zwecken auch bedienen. Auch hieße es die Pflichten der Menschlichkeit verkennen, würde man die Besatzungen der Kriegsschiffe verhalten, sich den Waffen der Feinde ohne Gegenwehr preiszugeben. Kein Staat kann die Pflichten der Menschlichkeit wider die berufenen Verteidiger des Vaterlandes niedriger einschätzen, als die Pflichten gegen die Angehörigen fremder Mächte.

Die k. u. k. Regierung hätte daher nach ihrer Ueberzeugung davon ausgehen können, daß sich ihre dem Washingtoner Kabinett gegebene Zusage von vornherein nicht auf bewaffnete Handelsfahrzeuge erstrecke, da diese nach den geltenden Rechtsnormen, welche die Feindseligkeiten auf die organisierten Streitkräfte beschränken, als Freibeuterschiffe zu betrachten seien, die ohne weiteres der Vernichtung unterliegen. Wie die Geschichte lehrt, war es nach dem allgemeinen Völkerrecht niemals zugelassen, daß sich Handelsschiffe der Ausübung des Beuterechts durch Kriegsschiffe widersetzen. Selbst wenn aber eine Norm dieses Inhalts aufgewiesen werden könnte, so wäre damit noch nicht dargetan, daß sich die Schiffe mit Waffen versehen dürfen. Es ist auch in Betracht zu ziehen, daß die Bewaffnung der Handelsschiffe die Kriegführung zur See vollständig umgestalten muß, und daß diese Umgestaltung nicht den Absichten derer entsprechen kann, die bemüht sind, im Seekrieg die Grundsätze der Menschlichkeit zur Geltung zu bringen. In der Tat hat seit der Abschaffung der Kaperei bis vor wenigen Jahren keine Regierung auch nur im entferntesten daran gedacht, Handelsschiffe zu bewaffnen. Im ganzen Verlaufe der zweiten Friedenskonferenz, die sich mit allen Fragen des Seekriegsrechts befaßt hat, wurde der Bewaffnung von Kauffahrteischiffen mit keinem Worte Erwähnung getan. Nur ein einziges Mal und gelegentlich fiel eine Aeußerung, die für diese Frage von Interesse ist. Und es ist bezeichnend, daß es ein hoher britischer Seeoffizier war, der unbefangen erklärte: *„Lorsqu'un navire de guerre se propose d'arrêter et de visiter un vaisseau marchand' le commandant avant de mettre une embarcation à la mer fera tirer un coup de canon. Le coup de canon est la meilleure garantie que l'on puisse donner. Les navires de commerce n'ont pas de canons à bord.“*

Nichtsdestoweniger hat Oesterreich-Ungarn auch in dieser Frage an seiner Zusage festgehalten. In der bezogenen Zirkularverbalnote wurden die Neutralen rechtzeitig davor gewarnt, ihre Person und ihre Habe einem bewaffneten Schiff anzuvertrauen. Auch wurde die angekündigte Maßnahme nicht sogleich ins Werk gesetzt, sondern ein Aufschub erteilt, um den Neutralen zu ermöglichen, bewaffnete Schiffe, die sie schon bestiegen hatten, wieder zu verlassen. Endlich sind die k. u. k. Kriegsschiffe angewiesen, selbst im Falle der Begegnung mit bewaffneten feindlichen Handelsschiffen, wenn es nach der Sachlage möglich sein sollte, auf Erlassung einer Warnung und auf Rettung der Personen an Bord bedacht zu sein.

Die Angabe der amerikanischen Botschaft, die bewaffneten britischen Dampfer „Secondo" und „Welsh Prince" seien von österreichisch-ungarischen Tauchbooten ohne Warnung versenkt worden, beruht auf einem Irrtum. Der k. u. k. Regierung ist inzwischen die Mitteilung zugegangen, daß an der Versenkung dieser Dampfer k. u. k. Kriegsschiffe überhaupt nicht beteiligt waren.

In gleicher Weise, wie in der mehrerwähnten Zirkularverbalnote, hat die k. u. k. Regierung — und damit kommt sie auf die zu Beginn dieses *Aide-Mémoires* erörterte Frage des verschärften Unterseebootkrieges zurück — auch in ihrer Erklärung vom 31. Januar d. J. eine an die Adresse der Neutralen gerichtete Warnung unter Festsetzung einer entsprechenden Frist erlassen, ja, die ganze Erklärung stellt ihrem Wesen nach nichts anderes dar, als eine Warnung des Inhalts, es möge kein Handelsschiff die in der Erklärung genau bezeichneten Seegebiete befahren. Ueberdies sind die k. u. k. Kriegsschiffe beauftragt, womöglich auch in diesen Gebieten etwa angetroffene Handelsfahrzeuge zu warnen, sowie Besatzung und Fahrgäste in Sicherheit zu bringen. Die k. u. k. Regierung ist denn auch im Besitze zahlreicher Meldungen, daß Mannschaften und Passagiere von Schiffen, die in diesen Gebieten vernichtet worden sind, geborgen wurden. Für etwaige Verluste an Menschenleben, die gleichwohl bei der Vernichtung bewaffneter oder in den Sperrgebieten angetroffener Schiffe sich ergeben sollten, vermag jedoch die k. u. k. Regierung eine Verantwortung nicht zu übernehmen. Uebrigens darf bemerkt werden, daß die österreichisch-ungarischen Tauchboote nur in der Adria und im Mittelmeer operieren, und daß daher eine Beeinträchtigung amerikanischer Interessen durch k. u. k. Kriegsschiffe kaum zu besorgen ist.

Es bedarf wohl nach allem, was eingangs dieses *Aide-Mémoires* ausgeführt wurde, nicht erst der Versicherung, daß die Absperrung der in der Erklärung bezeichneten Seegebiete keineswegs der Absicht dient, Menschenleben zu vernichten oder auch nur zu gefährden, sondern daß sie, abgesehen vom höheren Zweck, durch Abkürzung des Krieges der Menschheit weitere Leiden zu ersparen, nur dazu bestimmt ist, Großbritannien und dessen Verbündete, die, ohne eine rechtswirksame Blockade über die Küsten der Zentralmächte verhängt zu haben, den Seeverkehr der Neutralen mit diesen Mächten unterbinden, in eine gleiche Lage der Isolierung zu versetzen und sie durch diesen Druck einem Frieden gefügig zu machen, der die Gewähr der Dauer in sich trägt. Daß sich Oesterreich-Ungarn hierbei anderer Kriegsmittel bedient als die Gegner, liegt vorwiegend an den Umständen, über welche den Menschen keine Macht gegeben ist. Die k. u. k. Regierung ist sich aber bewußt, daß sie alles, was sie vermochte, vorgekehrt hat, um Verlusten an Menschenleben vorzubeugen; sie würde das mit der Absperrung der Westmächte angestrebte Ziel am schnellsten und sichersten erreichen, wenn in jenen Meeresteilen kein einziges Menschenleben verloren ginge und kein einziges in Gefahr geriete.

Zusammenfassend vermag die k. u. k. Regierung festzustellen, daß die Zusicherung, die sie dem Washingtoner Kabinett im Fall „Ancona" gegeben

und im Fall „Persia“ erneuert hat, durch ihre Erklärungen vom 10. Februar 1916 und 31. Januar 1917 weder aufgehoben noch auch eingeschränkt wurde. Im Rahmen dieser Zusicherung wird sie vereint mit ihren Verbündeten auch fürderhin alles daransetzen, daß die Völker der Erde bald wieder der Segnungen des Friedens teilhaftig werden. Wenn sie in Verfolgung dieses Zieles, das, wie ihr wohl bekannt ist, die volle Sympathie des Washingtoner Kabinetts genießt, sich gezwungen sieht, auch die neutrale Schiffahrt in gewissen Seegebieten zu unterbinden, so möchte sie, um diese Maßnahme zu rechtfertigen, nicht so sehr auf das Verhalten der Gegner hinweisen, das ihr nichts weniger denn nachahmenswert dünkt, als vielmehr darauf, daß Oesterreich-Ungarn durch die Hartnäckigkeit und die Gehässigkeit seiner auf Vernichtung bedachten Feinde in den Zustand der Notwehr versetzt wurde, für welchen die Geschichte kein typischeres Beispiel kennt. Wie die k. u. k. Regierung die Erhebung findet im Bewußtsein, daß der Kampf, den Oesterreich-Ungarn führt, nicht nur der Wahrung seiner Lebensinteressen dient, sondern auch der Verwirklichung der Ideen der gleichen Rechte aller Staaten, legt sie in dieser letzten und schwersten Phase des Krieges, die, wie sie tief beklagt, auch von den Freunden Opfer heischt, den größten Wert darauf, durch Wort und Tat zu bekräftigen, daß ihr in gleicher Weise die Grundsätze der Menschlichkeit voranleuchten, wie das Gebot der Achtung vor den Interessen der neutralen Völker.

Nr. 2021. Mitteilung des amerikanischen Staatsdepartement an die fremden Regierungen über die Bewaffnung der amerikanischen Handelsschiffe. (Norddeutsche Allgemeine Zeitung vom 16. März 1917, Nr. 74, Zweite Ausgabe; laut Associated Preß vom 12. März 1917.)

Im Hinblick auf die Bekanntmachung der Kaiserlich deutschen Regierung vom 31. Januar 1917, daß alle Schiffe mit Einschluß derjenigen der Neutralen, die in bestimmten Zonen der hohen See angetroffen werden, versenkt werden würden, ohne Vorsorge für die Sicherheit der an Bord befindlichen Personen zu treffen, und ohne eine Untersuchung anzustellen, hat die Regierung der Vereinigten Staaten beschlossen, auf alle amerikanischen Handelsschiffe, die durch die gesperrten Gebiete fahren, eine bewaffnete Wache zu verbringen, zum Schutze der Schiffe und des Lebens der an Bord befindlichen Personen.

Nr. 2022. Wilsons Botschaft vom 2. April 1917 an den Kongreß. (Nach einer Veröffentlichung der American Exchange National Bank.)

Address of President *Woodrow Wilson.*

Gentlemen of the Congress:

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsability of making.

On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts

of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean. That has seemed to be the object of the German submarine warfare earlier in the war, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given to us that passenger boats should not be sunk, and that due warning would be given to all other vessels which its submarines might seek to destroy when no resistance was offered or escape attempted and care taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions taken were meagre and haphazard enough as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed. The new policy has swept every restriction aside. Vessels of every kind, whatever their flag, their character, their cargo, their destination, their errand, have been ruthlessly sent to the bottom without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the proscribed areas by the German Government itself and were distinguished by unmistakable marks of idendity have been sunk with the same reckless lack of compassion or of principle.

I was for a little while unable to believe that such things would in fact be done by any government that had hitherto suscribed to the humane practices of civilised nations. International law had its origin in the attemps to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world. By painful stage after stage has that law been built up with meagre enough results, indeed after all was accomplished that could be accomplished, but always with a clear view at least, of what the heart and conscience of mankind demanded. This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it would use at sea accept these which it is impossible to employ as it is employing them without throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world. I am not now thinking of the loss of property involved, immense and serious as that is, but only of the wanton and wholesale destruction of the lives of noncombatants, men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history been deemed innocent and legitimate. Property can be paid for, the lives of peaceful and innocent people cannot be. The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself, how it will meet it. The choice we make for ourselves must be made with a moderation of counsel and a temperateness of judgement befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right or human right of which we are only a single champion.

When I addressed the Congress on the twenty - sixth of February last I thought that it would suffice to assert our neutral rights with arms,

our right to use the seas against unlawful interference our right to keep our people safe against unlawful violence. But armed neutrality it now appears, is impracticable. Because submarines are in effect outlaws when used as the German, submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances grim necessity indeed, to endeavour to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is convoyed that the arms guards which we have placed on our merchant ships will be treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in the face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent, it is practically certain to draw us into the war without either rights or the effectiveness of belligerents. There is no choice we cannot make we are incapable of making: we will choice the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs, they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declares the recent course of the Imperial German Government to be in fact nothing less than war against the Government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany and, as incident to that, the extension to those governments of the most liberal financial credits, in order that our resources may so far as possible be added to theirs. It will involve the organisation and mobilisation of all the material resources and the country to supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemys submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousend men who should in my opinion be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation by well conceived taxation.

I say sustained so far as may be equitable by taxation because it seems to me that it would be most unwise to base the credits which will now be necessary entirely on money borrowed. It is our duty, I must

respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

In carrying out the measures by which these things are to be accomplished we should keep constantly in mind the wisdom of interfering as little as possible in our own preparation and in the equipment of our own military forces with the duty for it will be a very practical duty, of supplying the nations already at a war with Germany with the materials which they can obtain only from us or by our assistance. They are in the field and we should help them in every way to be effective there.

I shall take the liberty of suggesting, through the several executive departments of the Government for the consideration of your committees, measures for the accomplishment of the several objects I have mentioned. I hope that it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the government upon which the responsibility of conducting the war and safeguarding the nation will most directly fall.

While we do these things, these deeply momentous things let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and I do not believe that the thought of the nation has been altered or clouded by them, I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty-second of January last; the same that I had in mind when I addressed the Congress on the third of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of actions as will henceforth ensure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples and the menace of that peace and freedom lies in the existence of autocratic government backed by organized force which is controlled wholy by their will not by the will of their people. We have seen thee last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse, that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rules and wars were provoked and waged in the interest of dynasties or of little groops of ambitous men who were accustomed to use their fellow men as pawns and tools. Self-governed nations do not fill their neighbours states with spies or set the course of intrigue to bring about some critical posture of affairs which will give them an opportunity to strike and make conquest. Such designs can be successfully worked out only under cover and where no one has the right to ask questions. Cunningly contrived plans of deception or aggression, carried, it may be, from generation, can be worked out and kept from the light only within the privacy of course or behind the carefully guarded confidences of a narrow and privileged class. They are happily impossible where public

opinion commands and insists upon full information concerning all the nation's affairs.

A steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its convenants. It must be a league of honour, a partnership of opinion. Intrigue could eat its vitals away; the plotings of inner cercles who could plain what they would and render account to no one would be a corruption seated at its very heart, only free peoples can hold their purpose and their honour steady to a common end and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful and heartening things that • have been happening within the last few weeks in Russia? Russia was known by those who know it best to have been always in fact democratic at heart, in all the vital habits of her thought, in all the intimate relationships of her people that spoke their natural instinct their habitual attitude towards life. The autocracy that crowned the summit of her political structure long as it had stood and terrible as was the reality of its power, was not in fact Russian in origin, character or purpose and now it has been shaken and of the great, generous Russian people have been added in all their naive majesty and might to the forcess that are fighting for freedom in the world, for justice and for peace. Here is a fit partner for a League of Honour.

One of the things that has served to convince us that the Prussian autocracy was not and could never be our friend, is that from the very outset of the present war it has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot against our national unity of councel our peace within and without our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country have been carried on at the instigation, with the support and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to exstirpate them we have sought to put the most generous interpretation possible upon them because we know that their source lay, not in any hostile feeling or purpose of the German people towards us (who were, no doubt as ignorant of them as we ourselves were) but only in the selfish designs, of a Government that did what it pleased and told its people nothing. But they have played their part in serving to convince us at last that that Government entertains no real friendship for us and means to act against our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a Government following such methods we can never have a friend, and that in the presence of its organized power always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic governments of the world. We are now about to accept gage of battle with this natural foe to liberty and shall if necessary, spend the whole force of the nation to cheek and nullify its pretensions and its power. We are glad now, that we set the facts with no veil of false pretence about them to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included; for the rights

of nations great and small and the privilege of men everywhere to choose their way of life and of obidience. The world must be made safe for democraty. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them.

Just because we fight, without rencour and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctily the principles of right and of fair play we profess to be fighting for.

I have said nothing of the governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honour. The Austro-Hungarian Government has. indeed, avowed its unqualified endorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government and it has therefore not been possible for this Government to receive Count *Tarnowski*, the Ambassador recently accredited to this Government by the Imperial and Royal Government of Austria-Hungary; but that Government has not actually engaged in warfare against citizens of the United States on the sea, and I take the liberty for the present at least of prostponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other of defending our rights.

It will be all the easier for us to conduct ourselves as belligerents in a high spirit of rights and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people, and shall desire nothing so much as the early reestablishment of intimate relations of mutual advantage between us, however hard it may be for them for the time being, to believe that, this is spoken from our hearts. We have born with their present government through all these bitter months because of that friendship — exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life and we shall be proud it towards all who are in fact loyal to their neighbours and to the Government in the hour of best. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of a different mind and purpose. If there should be disloyalty it will be dealt with a firm hand of stern repression; but if it lifts its head at all, it will lift it only here and there and without countenance except from a lawless and malignant few.

It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are it may be, many months of fierly trial and sacrifice aged of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have

always carried nearest our hearts for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have with the pride of those who know, that the day has come, when America is privileged to spend her blood and her might for the principles that gave her birth aud happiness and the peace, which she has treasured. God helping her, she can no other.

Nr. 2023. Proklamation Wilsons vom 6. April 1917. (Nach einer Veröffentlichung der American Exchange National Bank.)

Whereas the Congress of the United States in the excise of the constitutional authority vested in them have resolved, by joint resolution of the Senate and House of Representatives bearing date this day, „That the State of war between the United States and the Imperial Government which has been thrust upon the United States is hereby formally declared“; whereas it is provided by Section four Thousand and sixty-seven of the Revised Statutes, as follows:

Whenever there is declared a war between the United States and any foreign nation or government or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted and to provide for the removal of those who not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the permises and for the public safety.

Whereas, by Sections four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, further provision is made relative to alien enemies?

Now, therefore, I, *Woodrow Wilson,* President of the United States of America, do hereby proclaim to all whom it may concern that a state of war exists between the United States and the Imperial German Governments; and I do specially direct all officers, civil or military, of the the United States that they exercise vigilance and zeal in the discharge of the duties incident to such a state of war and I do, moreover, earnestly appeal to all American citizens that they, in loyal devotion to their country, dedicated from its foundation to the principles of liberty and justice uphold the laws of the land and give undivided and willing support to those measures which may be adopted by the constitutional authorities in prosecuting the war to a successful issue and in obtaining a secure and just peace.

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the Revised Statutes, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States towards all natives, citizens, denizens, or subjects of Germany being males of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized, who for the purpose of this proclamation and under such sections of the Revised Statutes are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety and from violating the laws of the United States and of the states and territories thereof, and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and towards such alien enemies as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and alligiance to the United States.

And all alien enemies who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint or to give security, or to remove and depart from the United States in the manner prescribed by Sections four thousand and sixty-nine and four thousand and seventy of the Revised Statutes and as prescribed in the regulations duly promulgated by the President;

And pursuant to the authority vested in me, I hereby declare and establish the following regulations which I find necessary in the premises and for the public safety:

1. An alien enemy shall not have in his possession, at any time or place, any firearm, weapon or implement of war, or component part thereof ammunition, maxim or other silencer, bomb or explosive or material used in the manufacture of explosives;

2. An alien enemy shall not have in his possession at any time or place, or use or operate any aircraft or wireless apparatus or any form or cipher code, or any paper, document or book written or printed in cipher or in which there may be invisible writing.

3. All property found in the possession of an alien enemy in violation of the foregoing regulations shall be subject to seizure by the United States;

4. An alien enemy shall not approach or be found within one half of a mile of any federal or State fort, camp, arsenal, aircraft station, Government or naval vessel, navy yard, factory or workshop for the manufacture of munitions of war or of any products of the use of the army or navy;

5. An alien enemy shall not write in print, or publish any attack or threats against the Government or Congress of the United States or either branch thereof, or against the measures or policy of the United States, or against the person or property of any person in the military, naval or civil service of the United States or of the States or Territories, or of the district of Columbia, or of the municipal governments therein;

6. An alien enemy shall not commit or abet any hostile act against the United States, or give information, aid or comfort to its enemies;

7. An alien enemy shall not reside in or continue to reside in, to remain in, or enter any locality which the President may from time to time designate by Executive Order as a prohibited area in which residence by an alien enemy shall be found by him to constitute a danger to the public peace and safety of the United States except by permit from the President and except under such limitations or restrictions as the President may prescribe;

8. And alien enemy whom the President shall have reasonable cause to believe to be aiding or about to aid the enemy, or to be at large to the danger of the public peace or safety of the United States or to have violated or to be about to violate any of these regulations shall remove to any location designed by the President by Execute Order, and shall not remove therefrom without a permit or shall depart from the United States if so required by the President;

9. No alien enemy shall depart from the United States until he shall have received such permit as the President shall prescribe, or excent under order of a court, judge or justice, under Sections 4069 and 4070 of the Revised Statutes;

10. No alien enemy shall land in or enter the United States, except under such restrictions and such places as the President may prescribe;

11. If necessary to prevent violations of these regulations all alien enemies will be obliged to register;

12. An alien enemy whom there may be reasonable cause to believe to be aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or attempts to violate, or of whom there is reasonable ground to believe that he is about to violate, any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States Marshal, or his deputy, or such other officer as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp or other place of detention as may be directed by the President.

This Proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular in any way within the jurisdiction of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

(Seal) Done at the City of Washington, this sixth day of April, in the year of our Lord one thousand nine hundred and seventeen, and of the independance of the United States the one hundred and forty-first.

Woodrow Wilson. By the President: *Robert Lansing,*
Secretary of State.

F. Friedensaktionen 1916—1918.

Nr. 2024. Friedensangebot der Mittelmächte. Der Reichskanzler an den amerikanischen Geschäftsträger, den schweizerischen Gesandten und den spanischen Botschafter, 12. Dezember 1916.

(**A. A. D. S.***) Nr. 1.)

Berlin, den 12. Dezember 1916.

Der furchtbarste Krieg, den die Geschichte je gesehen hat, wütet seit bald zwei und einem halben Jahr in einem großen Teil der Welt. Diese Katastrophe, die das Band einer gemeinsamen tausendjährigen Zivilisation nicht hat aufhalten können, trifft die Menschheit in ihren wertvollsten Errungenschaften. Sie droht, den geistigen und materiellen Fortschritt, der den Stolz Europas zu Beginn des zwanzigsten Jahrhunderts bildete, in Trümmer zu legen.

Deutschland und seine Verbündeten, Oesterreich-Ungarn, Bulgarien und die Türkei, haben in diesem Kampfe ihre unüberwindliche Kraft erwiesen. Sie haben über ihre an Zahl und Kriegsmaterial überlegenen Gegner gewaltige Erfolge errungen. Unerschütterlich halten ihre Linien den immer wiederholten Angriffen der Heere ihrer Feinde stand. Der jüngste Ansturm im Balkan ist schnell und siegreich niedergeworfen worden. Die letzten Ereignisse beweisen, daß auch eine weitere Fortdauer des Krieges ihre Widerstandskraft nicht zu brechen vermag, daß vielmehr die gesamte Lage zu der Erwartung weiterer Erfolge berechtigt.

Zur Verteidigung ihres Daseins und ihrer nationalen Entwicklungsfreiheit wurden die vier verbündeten Mächte gezwungen, zu den Waffen zu greifen. Auch die Ruhmestaten ihrer Heere haben daran nichts geändert. Stets haben sie an der Ueberzeugung festgehalten, daß ihre eigenen Rechte und begründeten Ansprüche in keinem Widerspruch zu den Rechten der anderen Nationen stehen. Sie gehen nicht darauf aus, ihre Gegner zu zerschmettern oder zu vernichten.

Getragen von dem Bewußtsein ihrer militärischen und wirtschaftlichen Kraft, und bereit, den ihnen aufgezwungenen Kampf nötigenfalls bis zum äußersten fortzusetzen, zugleich aber von dem Wunsch beseelt, weiteres Blutvergießen zu verhüten und den Greueln des Krieges ein Ende zu machen,

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*) **Deutsches Weißbuch:**
Auswärtiges Amt. Diplomatische Schriftstücke aus der Zeit vom 12. Dezember 1916 bis zum 19. März 1917.

(Angeführt als **A. A. D. S.**)

Herausgeber.

schlagen die vier verbündeten Mächte vor, alsbald in Friedensverhandlungen einzutreten. Die Vorschläge, die sie zu diesen Verhandlungen mitbringen werden, und die darauf gerichtet sind, Dasein, Ehre und Entwicklungsfreiheit ihrer Völker zu sichern, bilden nach ihrer Ueberzeugung eine geeignete Grundlage für die Herstellung eines dauerhaften Friedens.

Wenn trotz dieses Anerbietens zu Frieden und Versöhnung der Kampf fortdauern sollte, so sind die vier verbündeten Mächte entschlossen, ihn bis zum siegreichen Ende zu führen. Sie lehnen aber feierlich jede Verantwortung dafür vor der Menschheit und der Geschichte ab.

Die Kaiserliche Regierung beehrt sich, die Regierung der .... durch die geneigte Vermittelung Euerer Exzellenz zu bitten, diese Mitteilung zur Kenntnis der Regierung .... bringen zu wollen.

Ich benutze diesen Anlaß, um Euerer p. p. die Versicherung meiner ausgezeichnetsten Hochachtung zu erneuern.

gez. *von Bethmann Hollweg.*

Nr. 2025. Antwort der Entente an die Mittelmächte auf das Friedensangebot. Kollektivnote vom 30. Dezember 1916, überreicht vom schweizerischen Gesandten und vom amerikanischen Geschäftsträger.

(**A. A. D. S.** Nr. 8.)

Les Gouvernements alliés de la Belgique, de la France, de la Grande-Bretagne, de l'Italie, du Japon, du Monténégro, du Portugal, de la Roumanie, de la Russie et de la Serbie, unis pour la défense de la liberté des dix peuples et fidèles à l'engagement pris de ne pas déposer isolément les armes, ont résolu de répondre collectivement aux prétendues propositions de paix qui leur ont été adressées de la part des Gouvernements ennemis par l'entremise des États-Unis, de l'Espagne, de la Suisse et des Pays-Bas.

Avant toute réponse, les puissances alliées tiennent à s'élever hautement contre les deux assertions essentielles de la note des puissances ennemies qui prétend rejeter sur les alliés la responsabilité de la guerre et qui proclame la victoire des puissances centrales.

Les alliés ne peuvent admettre une affirmation doublement inexacte et qui suffit à frapper de stérilité toute tentative de négociation.

Les nations alliées subissent depuis trente mois une guerre qu'elles ont tout fait pour éviter, elles ont démontré par des actes leur attachement à la paix. Cet attachement est aussi ferme aujourd'hui qu'en 1914; après la violation de ses engagements, ce n'est pas sur la parole de l'Allemagne que la paix, rompue par elle, peut être fondée.

Une suggestion sans conditions pour l'ouverture de négociations n'est pas une offre de paix. La prétendue proposition dépourvue de substance extérieure et de précision, mise en circulation par le gouvernement impérial, apparaît moins comme une offre de paix que comme une manœuvre de guerre.

Elle est basée sur la méconnaissance systématique du caractère de la lutte dans le passé pour assurer à un conflit local une solution pacifique. L'offre de conférence de l'Angleterre, la proposition française de commission internationale, la demande d'arbitrage de l'empereur de Russie à l'empereur d'Allemagne, l'entente réalisée entre la Russie et l'Autriche-Hongrie la veille du conflit, tous ces efforts ont été laissés par l'Allemagne sans réponse ou sans suite. La Belgique a été envahie par un empire qui avait garanti sa neutralité et qui n'a pas craint de proclamer lui-même que les traités dans le présent et dans l'avenir étaient des chiffons de papier et que nécessité n'a pas de loi.

Pour le passé la note allemande ignore, les faits, les dates, les chiffres qui établissent que la guerre a été voulue, provoquée et déclarée par l'Allemagne et l'Autriche-Hongrie. A la Haye c'est le délégué allemand qui avait refusé toute proposition de désarmement en juillet 1914. C'est l'Autriche-Hongrie qui, après avoir adressé à la Serbie un ultimatum sans précédent, lui a déclaré la guerre, malgré les satisfactions immédiatement obtenues. Les empires du centre ont alors repoussé toutes les tentatives faites par l'Entente.

Pour le présent les prétendues offres de l'Allemagne s'appuient sur une „carte de guerre" uniquement européenne qui n'exprime que l'apparence extérieure et passagère de la situation, non la force réelle des adversaires. Une paix conclue en partant de ces données serait à l'avantage unique des agresseurs qui ayant cru atteindre leur but en deux mois s'aperçoivent après deux ans qu'ils ne l'atteindront jamais.

Pour l'avenir, les ruines causées par la déclaration de guerre allemande, les attentats innombrables commis par l'Allemagne et ses alliés contre les belligérants et contre les neutres exigent des sanctions, des réparations et des garanties: l'Allemagne élude les unes et les autres.

En réalité l'ouverture faite par les puissances centrales n'est qu'une tentative, calculée en vue d'agir sur l'évolution de la guerre et d'imposer finalement une paix allemande.

Elle a pour objet de troubler l'opinion dans les pays alliés. Cette opinion, malgré tous les sacrifices consentis, a déjà répondu avec une fermeté admirable et dénoncé le vide de la déclaration ennemie.

Elle veut raffermir l'opinion publique de l'Allemagne et de ses alliés si gravement éprouvée déjà par leurs pertes, usés par le resserrement économique et écrasés par l'effort suprême qui est exigé de leurs peuples.

Elle cherche à tromper, intimider l'opinion publique des pays neutres fixée depuis longtemps sur les responsabilités initiales, éclairée sur les responsabilités présentes et trop clairvoyante pour favoriser les desseins de l'Allemagne en abandonnant la défense des libertés humaines.

Elle tente enfin de justifier d'avance aux yeux du monde des nouveaux crimes: Guerre sous-marine, déportation, travaux et enrôlement forcés de nationaux contre leur propre pays, violation de neutralité.

C'est en pleine conscience de la gravité, mais aussi des nécessités de l'heure, que les Gouvernements alliés étroitement unis entre eux, et en parfaite communion avec leurs peuples se refusent à faire état d'une proposition sans sincérité et sans portée.

Ils affirment une fois de plus qu'il n'y a pas de paix possible tant que ne seront pas assurées la réparation des droits et des libertés violés, la reconnaissance du principe des nationalités et de la libre existence des petits Etats; tant que n'est pas certain un règlement de nature à supprimer définitivement les causes qui, depuis si longtemps, ont ménacé les nations et à donner les seules garanties efficaces pour la sécurité du monde.

Les puissances alliées tiennent, en terminant, à exposer les considérations suivantes qui font ressortir la situation particulière où se trouve la Belgique après deux ans et demi de guerre. En vertu de traités internationaux signés par cinq grandes puissances de l'Europe au nombre desquelles figurait l'Allemagne, la Belgique jouissait avant la guerre d'un statut spécial, qui rendait son territoire inviolable et la mettait elle-même sous la garantie de ces puissances, à l'abri des conflits européens. La Belgique a cependant au mépris de ces traités subi la première l'aggression de l'Allemagne. C'est pourquoi le Gouvernement belge estime nécessaire de préciser le but que la

Belgique n'a jamais cessé de poursuivre, en combattant à côté des puissances de l'Entente pour la cause du droit et de la Justice.

La Belgique a toujours observé scrupuleusement le devoir que lui imposait sa neutralité. Elle a pris les armes pour défendre son indépendance et sa neutralité violées par l'Allemagne et pour rester fidèle à ses obligations internationales. Le 4 août au Reichstag, le chancelier a reconnu que cette aggression constituait une injustice contraire au droit des gens et s'est engagé au nom de l'Allemagne à la réparer.

Depuis deux ans et demi cette injustice a été cruellement aggravée par des pratiques de guerre et d'occupations qui ont épuisé les ressources du pays, ruiné ses industries, dévasté ses villes et ses villages, multiplié les massacres, les exécutions et les emprisonnements, et au moment où l'Allemagne parle au monde de paix et d'humanité, elle déporte et réduit en servitude des citoyens belges par milliers.

La Belgique avant la guerre, n'aspirait qu'à vivre en bon accord avec tous ses voisins. Son roi et son Gouvernement n'ont qu'un but: le rétablissement de la paix et du droit. Mais ils ne veulent que d'une paix qui assurerait à leur pays les réparations légitimes des garanties et des sécurités pour l'avenir.

Paris, le 30 décembre 1916 *).

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*) Die folgenden drei in diesen Zusammenhang gehörigen Noten sind in Teil **E.**, Band **VI** des **„Jahrbuchs des Völkerrechts“**, S. 228—235 abgedruckt:

Nr. 2008. Note *Wilsons* mit Friedensangebot an die kriegführenden Mächte. Der amerikanische Geschäftsträger in Berlin an das Auswärtige Amt, 21. Dezember 1916.

(**A. A. D. S.** Nr. 3.)

Nr. 2009. Deutsche Antwort auf die Note *Wilsons* vom 21. Dezember 1916. Der Staatssekretär des Auswärtigen Amts an den amerikanischen Botschafter in Berlin, 26. Dezember 1916.

(**A. A. D. S.** Nr. 5.)

Nr. 2010. Botschaft *Wilsons* an den Senat zur Friedensfrage. Der amerikanische Botschafter in Berlin an das Auswärtige Amt, 22. Januar 1917.

(**A. A. D. S.** Nr. 15.)

Mit diesen drei Noten stehen folgende, nachstehend S. 268 ff. abgedruckte Noten im engen Zusammenhang:

Nr. 2026. Antwortnote Spaniens an *Wilson* zur Friedensfrage, 2. Januar 1917.

Nr. 2027. Note der belgischen Regierung an den amerikanischen Botschafter in Paris, 10. Januar 1917.

Nr. 2028. Antwort der Entente an die Regierung der Vereinigten Staaten von Amerika, 12. Januar 1917.

Herausgeber.

Nr. 2026. Antwortnote Spaniens an Wilson zur Friedensfrage, 2. Januar 1917.

(**N. A. Z.***), 3. I. 1917, Nr. 2, I.)

Madrid, 1. Januar 1917.

Die Regierung veröffentlicht folgende Antwortnote Spaniens auf die Note Wilsons:

Die Regierung Seiner Majestät hat durch Vermittlung Ihres Botschafters eine Abschrift der Note erhalten, die der Präsident der Vereinigten Staaten an die Kriegführenden gerichtet hat, und in der er dem Wunsche Ausdruck gibt, es möchte eine baldige Gelegenheit herbeigeführt werden, von allen zurzeit kriegführenden Nationen eine Erklärung zu erlangen über ihren Standpunkt hinsichtlich der Grundlagen, die zur Beendigung des Krieges führen könnten. Diese Abschrift ist begleitet von einer andern Note Euer Exzellenz, datiert vom 22. Dezember, in der Sie gemäß später erhaltener Weisungen im Namen des Präsidenten erklären, der Augenblick scheine ihm geeignet für einen Schritt der Regierung Seiner Majestät, die, wenn sie es für tunlich erachte, die Haltung der Vereinigten Staaten unterstützen möge. Angesichts des begreiflichen Wunsches der genannten Regierung, in ihrem Vorschlage zugunsten des Friedens unterstützt zu werden, ist die Regierung Seiner Majestät der Ansicht, daß, da der Präsident der nordamerikanischen Republik die Initiative ergriffen hat, und die verschiedenen Eindrücke, welche diese hervorgerufen hat, bereits bekannt sind, der Schritt, zu dem die Vereinigten Staaten einladen, keinerlei Wirkung haben würde, um so mehr als die Mittelmächte den festen Willen kundgeben, daß die Friedensbedingungen unter den Kriegführenden vereinbart werden sollen. Die Regierung Seiner Majestät ist bei aller Achtung für die edlen Triebfedern des Vorgehens des Präsidenten *Wilson*, das immer die Anerkennung und Dankbarkeit aller Völker verdient, bereit, sich nicht jeder Verhandlung über ein Abkommen, das geeignet ist, das humanitäre Werk der Beendigung des Krieges zu fördern, zu entziehen, sie jedoch schwebend zu lassen und ihre Aktion auf den Augenblick aufzusparen, wo die Anstrengungen aller derjenigen, die den Frieden wünschen, mehr Nutzen und Wirksamkeit haben werden, als jetzt, und wo eine Intervention Aussicht auf gute Ergebnisse bieten kann.

In Erwartung dieses Augenblicks erachtet es die Regierung Seiner Majestät für opportun zu erklären, daß sie hinsichtlich einer Verständigung zwischen den neutralen Ländern zum Schutze ihrer materiellen durch den Krieg berührten Interessen jetzt, wie zu Beginn des gegenwärtigen Krieges, bereit ist, in Unterhandlungen einzutreten, die zu einem Abkommen führen könnten, das geeignet wäre, alle nicht kriegführenden Länder zu vereinigen, sofern sie sich beeinträchtigt glauben und es für notwendig halten, den erlittenen Schaden gutzumachen oder zu vermindern.

Nr. 2027. Note der belgischen Regierung an den amerikanischen Botschafter in Paris, 10. Januar 1917.

(**A. A. D. S.** Nr. 12.)

Paris, den 10. Januar 1917.

Die Regierung des Königs, die sich der vom französischen Ministerpräsidenten dem Botschafter der Vereinigten Staaten überreichten Antwort anschließt, legt Wert darauf, den Gefühlen der Menschlichkeit, die den Präsidenten der Vereinigten Staaten zur Absendung der Note an die kriegführenden

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*) *Norddeutsche Allgemeine Zeitung.*
(Angeführt als **N. A. Z.**) Herausgeber.

Mächte bewogen haben, ihre besondere Anerkennung abzustatten, und sie würdigt in hohem Maße die Freundschaft, zu deren wohlwollendem Dolmetscher er sich Belgien gegenüber gemacht hat. Ebensosehr wie Mister *Woodrow Wilson* wünscht sie den gegenwärtigen Krieg möglichst bald beendigt zu sehen; aber der Präsident scheint zu glauben, daß die Staatsmänner der beiden entgegengesetzten Lager dieselben Kriegsziele verfolgen. Das Beispiel Belgiens zeigt leider, daß dies nicht der Fall ist. Belgien hat ebenso wie die Ententemächte niemals Eroberungspläne gehabt. Die barbarische Weise, in der die deutsche Regierung das belgische Volk behandelt hat und noch behandelt, gestattet nicht, anzunehmen, daß Deutschland es sich angelegen sein lassen wird, in Zukunft das Recht der schwachen Völker zu gewährleisten, das es, seitdem der von ihm entfesselte Krieg Europa heimsucht, unaufhörlich mit Füßen getreten hat. Anderseits hat die Regierung des Königs mit Vergnügen und Vertrauen die Versicherung verzeichnet, daß die Vereinigten Staaten mit Ungeduld darauf warten, um an Maßnahmen mitzuarbeiten, die nach dem Frieden ergriffen werden sollen, um die kleinen Nationen gegen Gewalt und Unterdrückung zu schützen. Vor dem Ultimatum hat Belgien nur danach gestrebt, mit allen seinen Nachbarn in guten Beziehungen zu leben, es betätigte mit einer peinlichen Loyalität jedem gegenüber die Pflichten, die ihm die Neutralität auferlegte. Wie wurde es von Deutschland für das Vertrauen belohnt, welches es ihm bewies? Von einem Tag zum andern ohne triftigen Grund wurde seine Neutralität verletzt und sein Gebiet überfallen. Der deutsche Reichskanzler hat, als er diese Verletzung des Rechtes und der Verträge im Reichstag ankündigte, die Ungerechtigkeit einer solchen Handlung anerkennen müssen und versprochen, daß sie wieder gutgemacht würde. Die Deutschen haben nach Besetzung des belgischen Gebietes das Haager Abkommen nicht beobachtet. Sie haben durch ebenso schwere wie willkürliche Besteuerungen die Hilfsquellen des Landes zum Versiegen gebracht, geflissentlich die Industrien zugrunde gerichtet, ganze Städte zerstört und eine beträchtliche Anzahl von Bewohnern getötet oder eingekerkert. Noch jetzt, während sie den Wunsch, die Kriegsgreuel zu beenden, laut erschallen lassen, bemühen sie sich, die Greuel der Besetzung zu vermehren, indem sie belgische Arbeiter zu Tausenden in die Sklaverei wegführen. Wenn es ein Land gibt, das das Recht hat zu sagen, daß es die Waffen ergriffen hat, um sein Dasein zu verteidigen, so ist es sicherlich Belgien, das gezwungen war, zu kämpfen oder sich der Schande zu unterwerfen. Belgien hegt den leidenschaftlichen Wunsch, daß den unerhörten Leiden der Bevölkerung ein Ende gemacht werde, aber es könnte nur einen Frieden annehmen, der ihm seine vollständige politische und wirtschaftliche Unabhängigkeit zurückgibt, der die Unversehrtheit seines Gebiets und seiner afrikanischen Kolonie verbürgt und ihm gleichzeitig gerechte Wiedergutmachungen und sichere Garantien für die Zukunft verschafft. Das amerikanische Volk hat seit Beginn des Krieges dem unterdrückten belgischen Volke heiße Sympathie bewiesen, die amerikanische *Commission for Relief in Belgium* entfaltet in enger Verbindung mit der Regierung des Königs und dem Nationalen Komitee eine unermüdliche Hingabe und eine wunderbare Tätigkeit, um Belgien mit Lebensmitteln zu versorgen, welches die Deutschen hätten Hungers sterben lassen. Die Regierung des Königs ist glücklich, die Gelegenheit ergreifen zu können, um der *Commission for Relief* und den großherzigen Amerikanern, die sich beeilt haben, das Elend der belgischen Bevölkerung zu lindern, ihre tiefe Dankbarkeit auszudrücken. Schließlich haben die Massenverhaftungen und Verschleppungen belgischer Zivilisten nirgends eine entrüstetere Einspruchs- und Mißbilligungsbewegung hervorgerufen als in den Vereinigten Staaten. Diese Tatsachen, die der amerikanischen Nation zur hohen Ehre gereichen, flößen der Regierung des Königs die

berechtigte Hoffnung ein, daß bei der endgültigen Regelung dieses langen Krieges die Stimme der Vereinigten Staaten sich erheben und zugunsten der belgischen Nation, des unschuldigen Opfers der deutschen Begierden, den Rang und den Platz fordern wird, den seine tadellose Vergangenheit, die Tapferkeit seiner Soldaten, die Treue, Ehre und die hervorragende Arbeitstüchtigkeit ihm unter den zivilisierten Nationen anweisen.

Die Pariser Blätter veröffentlichten am 14. Januar folgende amtliche Berichtigung der belgischen Note an *Wilson*:

Anstatt wie gemeldet: „Belgien könnte nur einen Frieden annehmen, welcher ihm seine vollständige politische und wirtschaftliche Unabhängigkeit zurückgibt, welcher die Unversehrtheit seines Gebiets und seiner afrikanischen Kolonie verbürgt und ihm gleichzeitig gerechte Wiedergutmachungen und sichere Garantien für die Zukunft schafft“ usw., muß es heißen: „Belgien könnte nur einen Frieden annehmen, welcher ihm gleichzeitig gerechte Entschädigungen und Sicherheiten sowie Garantien für die Zukunft verbürgt.“

Ferner anstatt: „Die Regierung des Königs hat die berechtigte Hoffnung, daß bei der endgültigen Regelung dieses langen Krieges die Stimme der Vereinigten Staaten sich mit Kraft erheben wird“ usw. muß es heißen: „Die Regierung des Königs hat die berechtigte Hoffnung, daß bei der endgültigen Regelung dieses langen Krieges die Stimme der Ententeländer in den Vereinigten Staaten einmütigen Widerhall finden wird“ usw.

Nr. 2028. Antwort der Entente an die Regierung der Vereinigten Staaten von Amerika, 10. Januar 1917.

(**Misc. 5 [1917]**.*)

1. Les Gouvernements alliés ont reçu la note qui leur a été remise, le 19 décembre, 1916, au nom du Gouvernement des États-Unis. Ils l'ont étudiée avec le soin que leur commandaient à la fois l'exact sentiment qu'ils ont de la gravité de l'heure et la sincère amitié qui les attache au peuple américain.

2. D'une manière générale, ils tiennent à déclarer qu'ils rendent hommage à l'élévation des sentiments dont s'inspire la note américaine, et qu'ils s'associent de tous leurs vœux au projet de création d'une ligue des nations pour assurer la paix et la justice à travers le monde. Ils reconnaissent tous les avantages que présentera, pour la cause de l'humanité et de la civilisation, l'institution de règlements internationaux destinés à éviter les conflits violents entre nations, règlements qui devraient comporter les sanctions nécessaires pour en assurer l'exécution et empêcher ainsi qu'une sécurité apparente ne serve qu'à faciliter de nouvelles agressions.

3. Mais une discussion sur les arrangements futurs destinés à assurer une paix durable suppose d'abord un règlement satisfaisant du conflit actuel. Les Alliés éprouvent un désir aussi profond que le Gouvernement des États-Unis de voir se terminer le plus tôt possible la guerre dont les Empires centraux sont responsables, et qui inflige à l'humanité de si cruelles souffrances. Mais ils estiment qu'il est impossible dès aujourd'hui de réaliser

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*) Miscellaneous. Nr. 5 (1917). *Reply of the Allied Governments to the Note communicated by the United States Ambassador on December 20, 1916. Presented to both Houses of Parliament by Command of His Majesty. February 1917.*

(Angeführt als **Misc. 5 [1917]**, vgl. auch A. A. D. S. Nr. 11.)

Herausgeber.

une paix qui leur assure les réparations, les restitutions et les garanties auxquelles leur donne droit l'agression dont la responsabilité incombe aux Puissances centrales et dont le principe même tendait à ruiner la sécurité de l'Europe; une paix qui permette, d'autre part, d'établir sur une base solide l'avenir des nations européennes. Les nations alliées ont conscience qu'elle ne combattent pas pour des intérêts égoïstes, mais avant tout pour la sauvegarde de l'indépendance des peuples, du droit et de l'humanité.

4. Les Alliés se rendent pleinement compte des pertes et des souffrances que la guerre fait supporter aux neutres comme aux belligérants et ils les déplorent; mais ils ne s'en tiennent pas pour responsables n'ayant en aucune façon ni voulu, ni provoqué cette guerre, et ils s'efforcent de réduire ces dommages dans toute la mesure compatible avec les exigences inexorables de leur défense contre les violences et les pièges de l'ennemi.

5. C'est avec satisfaction, dès lors, qu'ils prennent acte de la déclaration faite que la communication américaine n'est associée d'aucune manière dans son origine avec celle des Puissances centrales, transmise le 18 décembre, par le Gouvernement de l'Union. Ils ne doutaient pas, au surplus, de la résolution de ce Gouvernement d'éviter jusqu'à l'apparence d'un appui, même moral, accordé aux auteurs responsables de la guerre.

6. Les Gouvernements alliés croient devoir s'élever de la manière la plus amicale mais la plus nette contre l'assimilation établie dans la note américaine entre les deux groupes de belligérants; cette assimilation, basée sur des déclarations publiques des Puissances centrales, est en opposition directe avec l'évidence, tant en ce qui concerne les responsabilités du passé qu'en ce qui concerne les garanties de l'avenir; le Président *Wilson*, en la mentionnant, n'a certainement pas entendu s'y associer.

7. S'il y a un fait historique établi à l'heure actuelle, c'est la volonté d'agression de l'Allemagne et de l'Autriche-Hongrie pour assurer leur hégémonie sur l'Europe et leur domination économique sur le monde. L'Allemagne a prouvé, par la déclaration de guerre, par la violation immédiate de la Belgique et du Luxembourg et par la façon dont elle a conduit la lutte, son mépris systématique de tout principe d'humanité et de tout respect pour les petits États; à mesure que le conflit a évolué, l'attitude des Puissances centrales et de leurs alliés a été un continuel défi à l'humanité et à la civilisation. Faut-il rappeler les horreurs qui ont accompagné l'invasion de la Belgique et de la Serbie, le régime atroce imposé aux pays envahis, le massacre de centaines de milliers d'Arméniens inoffensifs, les barbaries exercées contre les populations de Syrie, les raids des zeppelins sur les villes ouvertes, la destruction par les sous-marins de paquebots et de navires marchands, même sous pavillon neutre, le cruel traitement infligé aux prisonniers de guerre, les meurtres juridiques de Miss *Cavell* et du Capitaine *Fryatt*, la déportation et la réduction en esclavage des populations civiles, &c.?

L'exécution d'une pareille série de crimes perpétrés sans aucun souci de la réprobation universelle, explique amplement au Président *Wilson* la protestation des Alliés.

8. Ils estiment que la note qu'ils ont remise aux États-Unis en réplique à la note allemande répond à la question posée parle Gouvernement américain et constitue, suivant les propres expressions de ce dernier. „Une déclaration publique quant aux conditions auxquelles la guerre pourrait être terminée."

M. *Wilson* souhaite davantage: il désire que les Puissances belligérantes affirment, en pleine lumière, les buts qu'elles se proposent en poursuivant la guerre. Les Alliés n'éprouvent aucune difficulté à répondre à cette demande. Leurs buts de guerre sont bien connus: ils ont été formulés à plusieurs reprises par les chefs de leurs divers Gouvernements. Ces buts de guerre ne seront exposés dans le détail, avec toutes les compensations et indemnités

équitables pour les dommages subis, qu'à l'heure des négociations. Mais le monde civilisé sait qu'ils impliquent, de toute nécessité et en première ligne, la restauration de la Belgique, de la Serbie et du Monténégro et les dédommagements qui leur sont dus; l'évacuation des territoires envahis en France, en Russie, en Roumanie, avec de justes réparations; la réorganisation de l'Europe, garantie par un régime stable et fondé à la fois sur le respect des nationalités et sur le droit à la pleine sécurité et à la liberté de développement économique que possèdent tous les peuples, petits et grands, et en même temps sur des conventions territoriales et des règlements internationaux propres à garantir les frontières terrestres et maritimes contre des attaques injustifiées; la restitution des provinces ou territoires autrefois arrachés aux Alliés par la force ou contre le vœu des populations; la libération des Italiens, des Slaves, des Roumains et des Tchéco-Slovaques de la domination étrangère; l'affranchissement des populations soumises à la sanglante tyrannie des Turcs; le rejet hors d'Europe de l'Empire ottoman, décidément étranger à la civilisation occidentale.

9. Les intentions de Sa Majesté l'Empereur de Russie à l'égard de la Pologne ont été clairement indiquées par la proclamation qu'il vient d'adresser à ses armées.

10. Il va sans dire que si les Alliés veulent soustraire l'Europe aux convoitises brutales du militarisme prussien, il n'a jamais été dans leur dessain de poursuivre, comme on l'a prétendu, l'extermination des peuples allemands et leur disparition politique. Ce qu'ils veulent avant tout, c'est assurer la paix sur les principes de liberté et de justice, sur la fidélité inviolable aux obligations internationales, dont n'a cessé de s'inspirer le Gouvernement des États-Unis.

11. Unis dans la poursuite de ce but supérieur, les Alliés sont déterminés, chacun et solidairement, à agir de tout leur pouvoir et à consentir tous les sacrifices pour mener à une fin victorieuse un conflit dont ils sont convaincus que dépendent non seulement leur propre salut et leur prospérité, mais l'avenir de la civilisation même.

Paris, le 10 janvier, 1917.

Nr. 2029. Friedenskundgebung des Papstes an die Staatsoberhäupter der kriegführenden Völker, 1. August 1917.

(**N. A. Z.,** 18. VIII. 1917, Nr. 227, I.)

An die Staatsoberhäupter der kriegführenden Völker.

Von Anbeginn Unseres Pontifikats, inmitten der Schrecken des furchtbaren über Europa entfesselten Krieges, haben Wir Uns vor allem drei Dinge vorgenommen: vollkommene Unparteilichkeit zu wahren gegenüber allen Kriegführenden, wie es demjenigen gebührt, welcher der Vater aller ist und welcher alle seine Kinder mit gleicher Zuneigung liebt; ununterbrochen bestrebt zu sein, allen möglichst viel Gutes zu erweisen, ohne Ansehung der Person, ohne Unterscheidung der Nationalität oder der Religion, wie es Uns sowohl das allgemeine Gesetz der Nächstenliebe als die Uns von Christus übertragene höchste geistliche Würde vorschreibt; endlich — wie es in gleicher Weise Unsere friedensstiftende Sendung erheischt — nichts von dem zu unterlassen — soweit es in Unserer Macht steht —, was dazu beitragen könnte, das Ende dieser Not zu beschleunigen, indem Wir den Versuch unternehmen, die Völker und ihre Staatsoberhäupter zu Entschlüssen der Mäßigung und und zu ruhiger Erwägung des Friedens, eines „gerechten und dauerhaften" Friedens zu führen.

Jeder, der während der drei eben abgelaufenen schmerzvollen Jahre Unserem Werke gefolgt ist, hat leicht erkennen können, daß Wir zwar Unserem Entschluß vollkommener Unparteilichkeit und Unserem Bestreben wohlzutun immerdar treugeblieben sind, aber ebenso unablässig die kriegführenden Völker und Regierungen ermahnt haben, wieder Brüder zu werden, obwohl nicht alles bekanntgegeben ist, was Wir getan haben, um dieses edle Ziel zu erreichen.

Gegen Ende des ersten Kriegsjahres richteten Wir an die im Streite befindlichen Nationen die lebhaftesten Ermahnungen und gaben überdies den Weg an, dem man folgen müsse, um zu einem beständigen und für alle ehrenvollen Frieden zu kommen. Leider wurde Unser Ruf nicht gehört und der Krieg ging noch während zweier Jahre mit allen seinen Schrecken erbittert weiter; er wurde sogar grausamer und breitete sich zu Lande und zu Wasser aus, ja bis in die Lüfte; Verheerungen und Tod sah man hereinbrechen über unverteidigte Städte, über ruhige Dörfer, über ihre unschuldige Bevölkerung. Und jetzt kann niemand sich vorstellen, um wieviel sich die Leiden aller vermehren und erschweren würden, wenn weitere Monate, oder schlimmer noch, weitere Jahre sich diesen blutigen drei Jahren anreihten. Soll die zivilisierte Welt denn ganz zu einem Feld des Todes werden? Will das so ruhmvolle und blühende Europa, wie von einem allgemeinen Wahnsinn hingerissen, dem Abgrund entgegeneilen und zu seiner Selbstvernichtung die Hand bieten?

Wir, die Wir keine besondere politische Absicht verfolgen, die Wir weder auf Einflüsterungen noch auf die eigennützigen Bestrebungen irgendeiner der kriegführenden Parteien horchen, sondern als gemeinsamer Vater aller Gläubigen einzig getrieben sind von dem höchsten Pflichtgefühl, von den inständigen Bitten Unserer Kinder, welche Unsere Vermittelung und Unser friedenstiftendes Wort erflehen, von der Stimme der Menschlichkeit und der Vernunft selbst, Wir lassen in einer so beängstigenden Lage, angesichts einer so schweren Bedrohung von neuem einen Friedensruf ertönen und richten abermals eine dringende Mahnung an diejenigen, welche die Geschicke der Nationen in ihren Händen halten. Um Uns aber nicht mehr auf allgemeine Ausdrücke zu beschränken, wie es Uns bisher die Umstände ratsam erscheinen ließen, wollen Wir nunmehr zu Vorschlägen übergehen, die in höherem Maße anschaulich und ausführbar sind, und die Regierungen der kriegführenden Völker auffordern, sich über die folgenden Punkte, welche als die notwendige Grundlage für einen gerechten und dauerhaften Frieden erscheinen, ins Einvernehmen zu setzen, wobei ihnen überlassen bleibt, die Punkte im einzelnen festzulegen und zu ergänzen.

Vor allem muß der Grundgedanke sein, daß an die Stelle der materiellen Kraft der Waffen die moralische Kraft des Rechts tritt; hieraus folgt ein billiges Einvernehmen aller zum Zwecke gleichzeitiger und gegenseitiger Verminderung der Rüstungen nach bestimmten Regeln und unter gewissen Sicherheiten bis zu dem Maße, das zur Aufrechterhaltung der öffentlichen Ordnung in jedem Staate notwendig und ausreichend ist; sodann an Stelle der Streitkräfte die Einführung der Schiedsgerichtsbarkeit mit ihrer hohen friedenstiftenden Wirkung gemäß vereinbarter Normen unter Androhung bestimmter Nachteile gegenüber dem Staate, der sich weigern sollte, entweder die internationalen Streitfragen der Schiedsgerichtsbarkeit zu unterwerfen oder deren Entscheidungen anzunehmen.

Wenn einmal auf diese Weise die Vorherrschaft des Rechtes hergestellt ist, möge man jedes Hindernis beseitigen, das dem Verkehr der Völker im Wege steht, indem man in gleicher Weise durch feste Regeln die wahre Freiheit und Gemeinsamkeit der Meere sichert; dies würde einesteils vielfache

Konfliktsgründe ausschalten, anderenteils allen neue Quellen des Wohlstandes und Fortschritts eröffnen.

Was den Ersatz der Schäden und der Kriegskosten betrifft, so sehen Wir kein anderes Mittel, die Frage zu lösen, als daß Wir den allgemeinen Grundsatz eines vollständigen und gegenseitigen Verzichts aufstellen, der im übrigen durch die unendlichen aus der Abrüstung sich ergebenden Wohltaten gerechtfertigt ist; dies um so mehr als die Fortsetzung eines solchen Blutvergießens einzig und allein aus wirtschaftlichen Gründen nicht zu verstehen wäre. Wenn es andererseits noch besondere Gründe für gewisse Fälle geben sollte, möge man sie mit Gerechtigkeit und Billigkeit abwägen.

Aber diese friedlichen Vereinbarungen mit ihren unermeßlichen Vorteilen, die sich aus ihnen ergeben, sind nicht möglich ohne die beiderseitige Herausgabe der gegenwärtig besetzten Gebiete. Folglich seitens Deutschlands: vollständige Räumung Belgiens mit Garantie seiner vollen politischen, militärischen und wirtschaftlichen Unabhängigkeit gegenüber gleichviel welcher Macht. Gleichfalls Räumung des französischen Gebietes; seitens der anderen kriegführenden Parteien eine ähnliche Herausgabe der deutschen Kolonien.

Was die strittigen territorialen Fragen betrifft, beispielsweise die zwischen Italien und Oesterreich, zwischen Deutschland und Frankreich, so kann man hoffen, daß die streitenden Parteien in Anbetracht der unermeßlichen Vorteile, die ein mit Abrüstung verbundener dauerhafter Frieden bringt, gewillt sind, sie aus einer versöhnlichen Gesinnung heraus zu prüfen, dabei den Bestrebungen der Völker nach Maßgabe des Gerechten und Möglichen, wie Wir es bei früherer Gelegenheit gesagt haben, Rechnung zu tragen und gelegentlich die Sonderinteressen dem Allgemeinwohl der großen menschlichen Gemeinschaft einzuordnen.

Derselbe Geist der Billigkeit und Gerechtigkeit wird die Prüfung der anderen territorialen und politischen Fragen leiten müssen, besonders derjenigen, welche sich auf Armenien, auf die Balkanstaaten und auf Gebiete beziehen, welche zum ehemaligen Königreich Polen gehörten, dem seine edlen geschichtlichen Ueberlieferungen und die von ihm insonderheit während des gegenwärtigen Krieges erduldeten Leiden gerechterweise das Mitgefühl der Nationen gewinnen müssen.

Dies sind die hauptsächlichen Grundlagen, auf denen, wie Wir glauben, sich die kommende Neuordnung der Völker stützen muß. Sie sind so beschaffen, daß sie die Wiederkehr ähnlicher Konflikte unmöglich machen und die Lösung der für die Zukunft und das materielle Wohlbefinden aller kriegführenden Staaten so wichtigen wirtschaftlichen Frage vorbereiten. Indem Wir sie Ihnen überreichen, Ihnen, die Sie zu dieser tragischen Stunde die Geschicke der kriegführenden Nationen lenken, sind Wir daher von einer beglückenden Hoffnung beseelt, nämlich sie angenommen zu sehen und so zu erleben, daß der schreckliche Kampf, der immer mehr und mehr als unnötige Metzelei erscheint, ein Ende nimmt. Alle Welt erkennt ja an, daß die Waffenehre sowohl auf der einen wie auf der anderen Seite unverletzt ist. Leihen Sie also Unserer Bitte Ihr Ohr, nehmen Sie die väterliche Aufforderung an, welche Wir im Namen des göttlichen Erlösers, des Friedensfürsten an Sie richten. Denken Sie über Ihre sehr große Verantwortung vor Gott und vor den Menschen nach; von Ihren Entschlüssen hängen Ruhe und Freude unzähliger Familien ab, das Leben Tausender junger Leute, mit einem Wort, das Glück der Völker, denen diese Wohltat zu verschaffen Ihre unbedingte Pflicht ist. Möge der Herr Ihnen Entschlüsse eingeben entsprechend seinem heiligsten Willen, möge es der Himmel fügen, daß Sie sich nicht nur den Beifall Ihrer Zeitgenossen verdienen, sondern auch bei den zukünftigen Geschlechtern den schönen Namen von Friedensstiftern sichern.

Was Uns betrifft, die Wir im Gebet und in der Buße mit allen gläubigen Seelen, die nach dem Frieden seufzen, eng verbunden sind, erflehen Wir für Sie vom Heiligen Geiste Licht und Rat.

Vom Vatikan, am 1. August 1917.

gez. *Benedictus P. P. XV.*
(Siegel)

Nr. 2030. Antwort der Vereinigten Staaten auf die Friedenskundgebung des Papstes, 27. August 1917.

(**A. J. S.** 11*), S. 216—218.)

August 27, 1917.

To His Holiness *Benedictus XV.*, Pope.

In acknowledgment of the communication of Your Holiness to the belligerent peoples, dated August 1, 1917, the President of the United States requests me to transmit the following reply:

Every heart that has not been blinded and hardened by this terrible war must be touched by this moving appeal of His Holiness the Pope, must feel the dignity and force of the humane and generous motives which prompted it, and must fervently wish that we might take the path of peace he so persuasively points out. But it would be folly to take it if it does not in fact lead to the goal he proposes. Our response must be based upon the stern facts and upon nothing else. It is not a mere cessation of arms he desires: it is a stable and enduring peace. This agony must not be gone through with again, and it must be a matter of very sober judgment what will insure us against it.

His Holiness in substance proposes that we return to the status quo ante bellum, and that then there be a general condonation, disarmament, and a concert of nations based upon an acceptance of the principle of arbitration; that by a similar concert freedom of the seas be established; and that the territorial claims of France and Italy, the perplexing problems of the Balkan states, and the restitution of Poland be left to such conciliatory adjustments as may be possible in the new temper of such a peace, due regard being paid to the aspirations of the peoples whose political fortunes and affiliations will be involved.

It is manifest that no part of this program can be successfully carried out unless the restitution of the status quo ante furnishes a firm satisfactory basis for it. The object of this war is to deliver the free peoples of the world from the menace and the actual power of a vast military establishment controlled by an irresponsible government which, having secretly planned to dominate the world, proceeded to carry the plan out without regard either to the sacred obligations of treaty or the long-established practices and long-cherished principles of international action and honor; which chose its own time for the war; delivered its blow fiercely and suddenly; stopped at no barrier either of law or of mercy; swept a whole continent within the tide of blood — not the blood of soldiers only, but the blood of innocent women and children also and of the helpless poor; and now stands balked but not

*) *Supplement to the American Journal of International Law, Vol. 11, Nr. 4, October 1917. Official Documents.*

(Angeführt als **A. J. S.** 11.)

Herausgeber.

defeated, the enemy of four-fifths of the world. This power is not the German people. It is the ruthless master of the German people. It is no business of ours how that great people came under its control or submitted with temporary zest to the domination of its purpose; but it is our business to see to it that the history of the rest of the world is no longer left to its handling.

To deal with such a power by way of peace upon the plan proposed by His Holiness the Pope would, so far as we can see, involve a recuperation of its strength and a renewal of its policy; would make it necessary to create a permanent hostile combination of nations against the German people, who are its instruments; and would result in abandoning the newborn Russia to the intrigue, the manifold subtle interference, and the certain counter-revolution which would be attempted by all the malign influences to which the German Government has of late accustomed the world. Can peace be based upon a restitution of its power or upon any word of honor it could pledge in a treaty of settlement and accomodation?

Responsible statesmen must now everywhere see, if they never saw before, that no peace can rest securely upon political or economic restrictions meant to benefit some nations and cripple or embarrass others, upon vindictive action of any sort, or any kind of revenge or deliberate injury. The American people have suffered intolerable wrongs at the hands of the Imperial German Government, but they desire no reprisal upon the German people, who have themselves suffered all things in this war, which they did not choose. They believe that peace should rest upon the rights of peoples, not the rights of governments — the rights of peoples great or small, weak or powerful — their equal right to freedom and security and self-government and to a participation upon fair terms in the economic opportunities of the world, the German people of course included if they will accept equality and not seek domination.

The test, therefore, of every plan of peace is this: Is it based upon the faith of all the peoples involved or merely upon the word of an ambitious and intriguing government, on the one hand, and of a group of free peoples, on the other? This is a test which goes to the root of the matter; and it is the test which must be applied.

The purposes of the United States in this war are known to the whole world, to every people to whom the truth has been permitted to come. They do not need to be stated again. We seek no material advantage of any kind. We believe that the intolerable wrongs done in this war by the furious and brutal power of the Imperial German Government ought to be repaired, but not at the expense of the sovereignty of any people — rather a vindication of the sovereignty both of those that are weak and of those that are strong. Punitive damages, the dismemberment of empires, the establishment of selfish and exclusive economic leagues, we deem inexpedient and in the end worse than futile, no proper basis for a peace of any kind, least of all for an enduring peace. That must be based upon justice and fairness and the common rights of mankind.

We cannot take the word of the present rulers of Germany as a guarantee of anything that is to endure, unless explicitly supported by such conclusive evidence of the will and purpose of the German people themselves as the other peoples of the world would be justified in accepting. Without such guarantees treaties of settlement, agreements for disarmament, covenants to set up arbitration in the place of force, territorial adjustments, reconstitutions of small nations, if made with the German Government, no man, no nation could now depend on. We must await some new evidence of the

purposes of the great peoples of the Central Powers. God grant it may be given soon and in a way to restore the confidence of all peoples everywhere in the faith of nations and the possibility of a convenanted peace.

Robert Lansing,
Secretary of State of the United States of America.

Nr. 2031. Deutsche Antwort auf die Friedenskundgebung des Papstes, 19. September 1917.

(**N. A. Z.**, 22. IX. 1917, Nr. 262, II.)

Berlin, 19. September 1917.

Herr Kardinal,

Euere Eminenz haben die Geneigtheit gehabt, Seiner Majestät dem Kaiser und König, meinem Allergnädigsten Herrn, mit Schreiben vom 2. v. M. eine Kundgebung Seiner Heiligkeit des Papstes zu übermitteln, worin Seine Heiligkeit voll Kummer über die Verheerungen des Weltkrieges einen eindringlichen Friedensappell an die Staatsoberhäupter der kriegführenden Völker richtet.

Seine Majestät der Kaiser und König hat geruht, mir von dem Schreiben Euerer Eminenz Kenntnis zu geben und mir die Beantwortung aufzutragen.

Seit geraumer Zeit verfolgt Seine Majestät mit hoher Achtung und aufrichtiger Dankbarkeit die Bemühungen Seiner Heiligkeit, im Geiste wahrer Unparteilichkeit die Leiden des Krieges nach Kräften zu lindern und das Ende der Feindseligkeiten zu beschleunigen. Der Kaiser erblickt in dem jüngsten Schritte Seiner Heiligkeit einen neuen Beweis edler und menschenfreundlicher Gesinnung und hegt den lebhaften Wunsch, daß zum Heile der ganzen Welt dem päpstlichen Ruf Erfolg beschieden sein möge.

Das Bestreben des Papstes *Benedikt XV.*, eine Verständigung unter den Völkern anzubahnen, konnte um so sicherer auf sympathische Aufnahme und überzeugungsvolle Unterstützung durch Seine Majestät rechnen, als der Kaiser von der Uebernahme der Regierung an seine vornehmste und heiligste Aufgabe darin gesehen hat, dem deutschen Volke und der Welt die Segnungen des Friedens zu erhalten. In der ersten Thronrede bei Eröffnung des Deutschen Reichstages am 25. Juni 1888 gelobte der Kaiser, daß die Liebe zum deutschen Heere und seine Stellung zu demselben ihn niemals in Versuchung führen würden, dem Lande die Wohltaten des Friedens zu verkümmern, wenn der Krieg nicht eine durch den Angriff auf das Reich oder dessen Verbündete uns aufgedrungene Notwendigkeit würde. Das deutsche Heer solle uns den Frieden sichern und, wenn er dennoch gebrochen würde, imstande sein, ihn mit Ehren zu erkämpfen. Der Kaiser hat das Gelöbnis, das er damals ablegte, in 26 Jahren segensreicher Regierung, aller Anfeindungen und Versuchungen ungeachtet, durch Taten erhärtet. Auch in der Krisis, die zu dem gegenwärtigen Weltbrand führte, ist das Bestreben Seiner Majestät bis zum letzten Augenblick dahin gegangen, den Streit durch friedliche Mittel zu schlichten; nachdem der Krieg gegen seinen Wunsch und Willen ausgebrochen war, hat der Kaiser im Verein mit seinen hohen Verbündeten zuerst die Bereitwilligkeit zum Eintritt in Friedensverhandlungen feierlich kundgegeben.

Hinter Seiner Majestät stand in werktätigem Willen zum Frieden das deutsche Volk. Deutschland suchte innerhalb der nationalen Grenzen freie Entwicklung seiner geistigen und materiellen Güter, außerhalb des Reichs-

gebietes ungehinderten Wettbewerb mit gleichberechtigten und gleichgeachteten Nationen. Ein ungehemmtes Spiel der friedlich in der Welt miteinander ringenden Kräfte hätte zur höchsten Vervollkommnung der edelsten Menschheitsgüter geführt. Eine unheilvolle Verkettung von Ereignissen hat im Jahre 1914 einen hoffnungsreichen Entwicklungsgang jäh unterbrochen und Europa in einen blutigen Kampfplatz umgewandelt.

In Würdigung der Bedeutung, die der Kundgebung Seiner Heiligkeit zukommt, hat die kaiserliche Regierung nicht verfehlt, die darin enthaltenen Anregungen ernster und gewissenhafter Prüfung zu unterziehen; die besonderen Maßnahmen, die sie in engster Fühlung mit der Vertretung des deutschen Volkes für die Beratung und Beantwortung der aufgeworfenen Fragen getroffen hat, legen davon Zeugnis ab, wie sehr es ihr am Herzen liegt, im Einklang mit den Wünschen Seiner Heiligkeit und der Friedenskundgebung des Reichstages vom 19. Juli d. Js. brauchbare Grundlagen für einen gerechten und dauerhaften Frieden zu finden.

Mit besonderer Sympathie begrüßt die kaiserliche Regierung den führenden Gedanken des Friedensrufes, worin sich Seine Heiligkeit in klarer Weise zu der Ueberzeugung bekennt, daß künftig an die Stelle der materiellen Macht der Waffen die moralische Macht des Rechtes treten muß. Auch wir sind davon durchdrungen, daß der kranke Körper der menschlichen Gesellschaft nur durch eine Stärkung der sittlichen Kraft des Rechtes gesunden kann. Hieraus würde nach Ansicht Seiner Heiligkeit die gleichzeitige Herabminderung der Streitkräfte aller Staaten und die Einrichtung eines verbindlichen Schiedsverfahrens für internationale Streitfragen folgen. Wir teilen die Auffassung Seiner Heiligkeit, daß bestimmte Regeln und gewisse Sicherheiten für eine gleichzeitige und gegenseitige Begrenzung der Rüstungen zu Lande, zu Wasser und in der Luft sowie für die wahre Freiheit und Gemeinsamkeit der hohen See diejenigen Gegenstände darstellen, bei deren Behandlung der neue Geist, der künftig im Verhältnis der Staaten zueinander herrschen soll, den ersten verheißungsvollen Ausdruck finden müßte. Es würde sich sodann ohne weiteres die Aufgabe ergeben, auftauchende internationale Meinungsverschiedenheiten nicht durch das Aufgebot der Streitkräfte, sondern durch friedliche Mittel, insbesondere auch auf dem Wege des Schiedsverfahrens entscheiden zu lassen, dessen hohe, friedensstiftende Wirkung wir mit Seiner Heiligkeit voll anerkennen. Die kaiserliche Regierung wird dabei jeden Vorschlag unterstützen, der mit den Lebensinteressen des Deutschen Reiches und Volkes vereinbar ist. Deutschland ist durch seine geographische Lage und seine wirtschaftlichen Bedürfnisse auf den friedlichen Verkehr mit den Nachbarn und mit dem fernen Ausland angewiesen. Kein Volk hat daher mehr als das deutsche Anlaß zu wünschen, daß an die Stelle des allgemeinen Hasses und Kampfes ein versöhnlicher und brüderlicher Geist zwischen den Nationen zur Geltung kommt.

Wenn die Völker, von diesem Geist geleitet, zu ihrem Heile erkannt haben werden, daß es gilt, mehr das Einigende als das Trennende in ihren Beziehungen zu betonen, wird es ihnen gelingen, auch die einzelnen noch offenen Streitpunkte so zu regeln, daß jedem Volk befriedigende Daseinsbedingungen geschaffen werden und damit eine Wiederkehr der großen Völkerkatastrophe ausgeschlossen erscheint. Nur unter dieser Voraussetzung kann ein dauernder Friede begründet werden, der die geistige Wiederannäherung und das wirtschaftliche Wiederaufblühen der menschlichen Gesellschaft begünstigt.

Diese ernste und aufrichtige Ueberzeugung ermutigt uns zu der Zuversicht, daß auch unsere Gegner in den von Seiner Heiligkeit zur Erwägung unterbreiteten Gedanken eine geeignete Unterlage sehen möchten, um unter

Bedingungen, die dem Geiste der Billigkeit und der Lage Europas entsprechen, der Vorbereitung eines künftigen Friedens näherzutreten.

Genehmigen Euere Eminenz usw.

(Name des Reichskanzlers.)

Seiner Eminenz dem Staatssekretär Seiner Heiligkeit
des Papstes *Benedikt XV.*
Herrn Kardinal *Gasparri*, Rom.

Nr. 2032. Antwort Oesterreich-Ungarns auf die Friedenskundgebung des Papstes, 21. September 1917.

(**N. A. Z.**, 22. IX. 1917, Nr. 262, II.)

Wien, 22. September.

Die von dem Minister des Aeußern dem päpstlichen Nuntius am 10. d. M. übergebene Antwort Seiner Majestät auf die Note des Heiligen Vaters vom 1. August d. J. lautet in deutscher Uebersetzung wie folgt:

Heiliger Vater! Mit schuldiger Ehrerbietung und tiefer Bewegung haben Wir von dem neuen Schritte Kenntnis genommen, den Euere Heiligkeit in Erfüllung des Ihnen von Gott anvertrauten heiligen Amtes bei Uns und bei den Oberhäuptern der anderen kriegführenden Staaten in der edlen Absicht unternommen haben, die schwergeprüften Völker zu einer Einigung zu führen, die ihnen den Frieden wiedergibt. Dankbaren Herzens empfangen Wir diese neuerliche Gabe väterlicher Fürsorge, welche Sie, Heiliger Vater, allen Völkern stets unterschiedslos angedeihen lassen, und begrüßen aus der Tiefe unserer Seele den ergreifenden Mahnruf, den Euere Heiligkeit an die Regierungen der kriegführenden Völker ergehen ließen. Während dieses grausamen Krieges haben Wir stets zu Eurer Heiligkeit als zu jener höchsten Persönlichkeit aufgeblickt, welche kraft ihrer über das Irdische hinausreichenden Sendung und dank ihrer hohen Auffassung von den ihr auferlegten Pflichten hoch über den kriegführenden Völkern steht und die, jeder Beeinflussung unzugänglich, den Weg zu finden vermöchte, welcher zur Verwirklichung Unseres eigenen Wunsches nach Herbeiführung eines dauerhaften und für alle Teile ehrenvollen Friedens führen könnte. Seit Besteigung des Thrones Unserer Ahnen der Verantwortlichkeit voll bewußt, welche Wir vor Gott und den Menschen für das Uns anvertraute Schicksal der österreichisch-ungarischen Monarchie tragen, haben Wir nie das hohe Ziel aus den Augen verloren, Unsere Völker baldigst der Segnungen des Friedens teilhaftig werden zu lassen. Bald nach Unserem Regierungsantritte war es Uns denn auch vergönnt, in Gemeinschaft mit Unseren Verbündeten einen schon von Unserem erhabenen Vorgänger, weiland Kaiser und König Franz Joseph I. erwogenen und vorbereiteten Schritt zur Anbahnung eines ehrenvollen und dauerhaften Friedens zu unternehmen. In Unserer bei Eröffnung des österreichischen Reichsrats gehaltenen Thronrede haben Wir diesem Wunsche Ausdruck verliehen und hierbei betont, daß Wir einen Frieden erstreben, welcher das fernere Leben der Völker von Groll und Rachedurst befreit und der sie auf Generationen hinaus vor Anwendung der Waffengewalt sichert. Unsere gemeinsame Regierung hatte es inzwischen nicht unterlassen, in wiederholten und eindringlichen, in der ganzen Welt hörbaren Kundgebungen Unseren und den Willen der Völker der österreichisch-ungarischen Monarchie zum Ausdrucke zu bringen, dem Blutvergießen durch einen Frieden, wie er Euerer Heiligkeit selbst vorschwebt, eine Ende zu bereiten. Von dem Gedanken beglückt, daß Unsere Wünsche von Anbeginn an auf das gleiche Ziel gerichtet waren, das Euere Heiligkeit heute als das anzustrebende bezeichnen, haben

Wir die Uns jüngst zugekommenen konkreten und praktischen Anregungen Euerer Heiligkeit einer eingehenden Erwägung unterzogen, die zu dem folgenden Ergebnisse geführt hat:

Mit der Kraft tief wurzelnder Ueberzeugung begrüßen Wir den leitenden Gedanken Euerer Heiligkeit, daß die künftige Weltordnung unter Ausschaltung der Waffen auf der moralischen Weltmacht des Rechtes, auf der Herrschaft der internationalen Gerechtigkeit und Gesetzmäßigkeit ruhen müßte. Auch sind Wir von der Hoffnung durchdrungen, daß eine Hebung des Rechtsbewußtseins die Menschheit sittlich regenerieren würde. Wir treten daher der Auffassung Euerer Heiligkeit bei, daß Verhandlungen der Kriegführenden zu einer Verständigung darüber führen sollten und könnten, wie unter Schaffung entsprechender Sicherheiten die Rüstungen zu Lande, zu Wasser und in den Lüften gleichzeitig, wechselseitig und sukzessive auf ein bestimmtes Maß herabzusetzen seien und wie die von Rechts wegen allen Völkern der Erde gehörende hohe See von der Herrschaft oder Vorherrschaft einzelner befreit und der gleichmäßigen Benützung aller zu eröffnen wäre. Der friedenstiftenden Bedeutung des von Euerer Heiligkeit vorgeschlagenen Mittels, internationale Streitfragen der obligatorischen Schiedsgerichtsbarkeit zu unterwerfen, vollbewußt, sind Wir bereit, auch über diesen Vorschlag Euerer Heiligkeit in Verhandlung zu treten. Wenn es, wie Wir von ganzem Herzen wünschen, gelingen sollte, zu Vereinbarungen der Kriegführenden zu gelangen, welche diese hehren Gedanken verwirklichen und damit der österreichisch-ungarischen Monarchie die Sicherheit für ihre ungehemmte weitere Entwicklung geben, dann kann es auch nicht schwer fallen, sonstige zwischen den kriegführenden Staaten noch zu regelnde Fragen im Geiste der Gerechtigkeit und und billigen Rücksichtnahme auf die wechselseitigen Daseinsbedingungen einer befriedigenden Lösung zuzuführen. Wenn die Völker der Erde im Sinne dieser Vorschläge Euerer Heiligkeit friedfertig miteinander in Verhandlungen träten, dann könnte hieraus der dauernde Frieden erblühen. Sie könnten vollkommene Bewegungsfreiheit auf hoher See erlangen, schwere materielle Lasten könnten von ihnen genommen und neue Quellen des Wohlstandes für sie eröffnet werden. Vom Gebot der Mäßigung und Versöhnlichkeit geleitet, erblicken Wir in den von Euerer Heiligkeit gemachten Vorschlägen geeignete Grundlagen für die Einleitung von Verhandlungen zur Vorbereitung eines für alle gerechten und dauerhaften Friedens und erhoffen lebhaft, daß auch unsere heutigen Feinde von dem gleichen Gedanken beseelt sein mögen. In diesem Sinne bitten Wir den Allmächtigen, er möge das von Euerer Heiligkeit eingeleitete Friedenswerk segnen. Wir haben die Ehre zu zeichnen als Euerer Heiligkeit sehr gehorsamer Sohn *Karl* m. p.

Nr. 2033. Wilsons Botschaft an den Kongreß (14 Punkte), 8. Januar 1918 *).

(**T.** **), 9. I. 1918; Nr. 41, 682, S. 7—8.)

Gentlemen of the Congress,

Once more, as repeatedly before, the spokesmen of the Central Empires have indicated their desire to discuss the objects of the war and the possible

*) Die vier bedeutsamsten Kundgebungen *Wilsons* zur Friedensfrage im Jahre 1918 sind: 1. *Wilsons* Botschaft an den Kongreß (14 Punkte), 8. Januar 1918; 2. *Wilsons* Botschaft an den Kongreß (4 Punkte), 11. Februar 1918; 3. Rede *Wilsons* am Grabe Washingtons, 4. Juli 1918; 4. Rede *Wilsons* an seine Mitbürger in New York, 27. September 1918 (5 Punkte.) Herausgeber.

bases of a general peace. Parleys have been in progress at Brest-Litovsk between representatives of the Central Powers, to which the attention of all the belligerents has been invited for the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to the terms of peace and settlement. The Russian representatives presented not only a perfectly definite statement of principles upon which they would be willing to conclude peace, but also an equally definite programme of concrete application of those principles. The representatives of the Central Powers on their part presented the outline of a settlement which if much less definite, seemed susceptible of liberal interpretation until their specific programme of practical terms was added. That programme proposed no concessions at all either to the sovereignty of Russia or to the preferences of populations with whose fortunes it dealt, but meant, in a word that the Central Empires were to keep every foot of territory their armed forces had occupied, every province, every city, every point of vantage, as a permanent addition to their territories and their power. It is a reasonable conjecture that the general principles of settlement which they at first suggested originated with the more liberal statesmen of Germany and Austria, the men who have begun to feel the forces of their own people's thought and purpose, while the concrete terms of actual settlement came from military leaders, who have no thought but to keep what they have got.

The negotiations have been broken off. The Russian representatives were sincere and in earnest. They cannot entertain such proposals of conquest and domination. The whole incident is full of significance. It is also full of perplexity. With whom are the Russian representatives dealing? For whom are the representatives of the Central Powers speaking? Are they speaking for the majorities of their respective Parliaments or for the minority parties, that military and imperialistic minority which has so far dominated their whole policy and controlled the affairs of Turkey and of the Balkan States, which have felt obliged to become their associates in this war? The Russian representatives have insisted, very fustly, very wisely and in the true spirit of modern democracy, that the conference which they have been holding with Teutonic and Turkish statesmen should be held within open not closed doors, and all the world has been the audience, as was desired. To whom have we been listening, then? To those who speak the spirit and intention of the resolutions of the German Reichstag of July 9 last, the spirit and intention of the Liberal leaders and parties of Germany, or to those who resist and defy that spirit and intention, and insist upon conquest and subjugation? Or are we listening in fact to both unreconciled and in open and hopeless contradiction? These are very serious and pregnant questions. Upon the answer to them depends the peace of the world.

But, whatever the result of the parleys at Brest-Litovsk, whatever the conclusions of the counsel and of the purpose in the utterances of the spokesmen of the Central Empires, they have again attempted to acquaint the world with their objects in the war, and have again challenged their adversaries to say what their objects are and what sort of settlement they would deem just and satisfactory. There is no good reason why that challenge should not be responded to, and responded to with the utmost candour. We did not wait for it, not once, but again and again we have laid our whole thought and purpose before the world, not in general terms only, but each time with

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) „*The Times*", London (angeführt als **T.). Der Text wurde mit demjenigen der „Vier Kundgebungen des Präsidenten *Wilson* zur Friedensfrage" (Berlin 1918, Verlag von *R. Hobbing*) verglichen und richtiggestellt.
Herausgeber.

sufficient definition to make it clear what sort of definitive terms of settlement must necessarily spring out of them. Within the last week Mr. *Lloyd George* has spoken with admirable candour and in admirable spirit for the people and Government of Great Britain. There is no confusion among the adversaries of the Central Powers, no uncertainty of principle, no vagueness of detail. The only secrecy of counsel, the only lack of fearless frankness, the only failure to make a definite statement of the objects of the war, lies with Germany and her Allies. The issues of life and death hang upon these definitions. No statesman who has the least conception of his responsibilities ought for the moment to permit himself to continue this tragical and appalling outpouring of blood and treasure, unless he is sure, beyond a peradventure, that the objects of the vital sacrifice are part and parcel of the very life of society, and that the people for whom he speaks think them right and imperative as he does.

There is, moreover, a voice calling for these definitions of principle and of purpose, which is, it seems to me. more thrilling and more compelling than any of the many moving voices with which the troubled air of the world is filled. It is the voice of the Russian people. They are prostrate and all but helpless, it would seem, before the grim power of Germany, which has hitherto known no relenting and no pity. Their power apparently is shattered, and yet the soul is not subservient. They will not yield either in principle or in action. Their conception of what is right, of what is human and honourable for them to accept has been stated with a frankness, a largeness of view, a generosity of spirit, a universal human sympathy, which must challenge the admiration of every friend of mankind, and they have refused to compound their ideals or desert others that they themselves may be safe. They call to us to say what it is that we desire, in what, if in anything, our purpose and our spirit differ from theirs, and I believe that the people of the United States would wish me to respond with utter simplicity and frankness.

Whether their present leaders believe it or not, it is our heartfelt desire and hope that some way may be opened whereby we may be privileged to assist the people of Russia to attain their utmost hope of liberty and ordered peace. It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open, and that they shall involve and permit thenceforth no secret understandings of any kind. The day of conquest and aggrandisement is gone by, so is also the day of secret covenants, entered into in the interests of particular Governments, and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation, whose purposes are consistent with justice and the peace of the world, to avow now, or at any other time, the objects it has in view.

We have entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible, unless they were corrected and the world secured once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in, and, particularly, that it be made safe for every peace-loving nation, which. like our own, wishes to live its own life, determine, its own institutions, be assured of justice and fair dealing by other peoples of the world, as against force and selfish aggression. All the peoples of the world are in effect partners in this interest. and for our own part we see very clearly that unless justice be done to others it will not be done to us.

The programme of the world's peace, therefore, is our programme, and that programme — the only possible programme as we see it — is this:

1. Open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.
2. Absolute freedom of navigation upon the seas outside territorial waters alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.
3. The removal, so far as possible, of all economic barriers, and the establishment of an equality of trade condition among all the nations consenting to the peace, and associating themselves for its maintenance.
4. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.
5. A free, open-minded, and absolutely impartial adjustment of all Colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty, the interests of the populations concerned must have equal weight with the equitable claims of the Government whose title is to be determined.
6. Evacuation of all Russian territory, and such a settlement of all questions affecting Russia as will secure the best and freest co-operation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for independent determination of her own political development and national policy, and assure her of a sincere welcome into the society of free nations, under institutions of her own choosing and more than a welcome assistance also of every kind that she may need, and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.
7. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act, the whole structure and validity of international law is for ever impaired.
8. All French territory should be freed, and the invaded portions, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine — which has unsettled the peace of the world nearly fifty years — should be righted in order that peace may once more be made in the interest of all.
9. A readjustment of the frontiers of Italy should be effected along clearly recognised lines of nationality.
10. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the first opportunity of autonomous development.
11. Roumania, Serbia, and Montenegro should be evacuated, occupied territories restored, Serbia accorded free and secure access to the sea, and the relations of the several Balkan States to one another determined by friendly counsel along historical established lines of allegiance and nationality and international guarantees of the political and economic

independence and territorial integrity of the several Balkan States should be entered into.

12. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty. But the other nationalities which are now under Turkish rule should be assured an undoubted security of life and absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.
13. An independent Polish State should be erected, which should include territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.
14. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political and territorial independence for small States alike.

In regard to these essential rectifications of wrong and assertions of right, we feel ourselves to be intimate partners of all the Governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end. For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved, but only because we wish the right to prevail, and desire a just and stable peace, such as can be secured only by removing the chief provocations to war which this programme does remove.

We have no jealousies of German greatness, and there is nothing in this programme that impairs it. We grudge her no achievement, or distinction of learning, or of pacific enterprise such as has made her record very bright and very enviable. We do not wish to injure her, or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair trading. We wish her only to accept a place of equality among the people of the world — the new world in which we now live — in stead of a place of mastery. Neither do we presume to suggest to her any modification of her institutions, but it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know for whom her spokesmen speak when they speak to us, whether for the Reichstag Majority, or for the Military Party, and the men whose creed is Imperial domination.

We have spoken now surely in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole programme I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle, and to the vindication of this principle they are ready to devote their lives, their honour, and everything that they possess. The moral climax of this the culminateng and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity, and devotion to the test.

Nr. 2034. Wilsons Botschaft an den Kongreß (vier Punkte; Antwort auf die Reden des deutschen Reichskanzlers und des Grafen Czernin), 11. Februar 1918.

(**T.**, 12. II. 1918; Nr. 41, 711, S. 7.)

Gentlemen of the Congress, on Jan. 8 I had the honour of addressing you on the objects of the war as our people conceive them. The Prime Minister of Great Britain had spoken in similar terms on Jan. 5. To these addresses the German Chancellor replied on the 24th, and Count *Czernin* for Austria on the same day. It is gratifying to have our desire so promtly realised that all exchanges of view on this great matter should be made in the hearing of all the world.

Count *Czernin's* reply, which is directed chiefly to my own address of Jan. 8, is uttered in a very friendly tone. He finds in my statement a sufficiently encouraging approach to the views of his own Government to justify him in believing that it furnishes a basis for a more detailed discussion of purposes by the two Governments.

He is represented to have intimated that the views he was expressing had been communicated to me beforehand, and that I was aware of them at the time he was uttering them; but in this I am sure he was misunderstood. I had received no intimation of what he intended to say. There was, of course, no reason why he should communicate privately with me. I am quite content to be one of his public audience.

Count *von Hertling's* reply is, I must say, very vague and very confusing. It is full of equivocal phrases, and leads it is not clear where, but it is certainly in a very different tone from that of Count *Czernin*, and apparently of an opposite purpose.

It confirms, I am sorry to say, rather than removes the unfortunate impression made by what we had learned of the conferences at Brest-Litovsk. His discussion and acceptance of our general principles lead him to no practical conclusion. He refuses to apply them to the substantive items which must constitute the body of any final settlement. He is jealous of international action and of international counsel. He accepts, he says, the principle of public diplomacy, but he appears to insist that it be confined, at any rate in this case, to generalities, and that the several particular questions of territory and sovereignty, the several questions upon whose settlement must depend the acceptance of peace by the 23 States now engaged in the war, must be discussed and settled not in general council, but severally by the nations most immediately concerned by interest or neighbourhood.

He agrees that the seas should be free, but looks askance at any limitation to that freedom by international action in the interest of the common order. He would without reserve be glad to see economic barriers removed between nation and nation, for that could in no way impede the ambitions of the military party with whom he seems constrained to keep on terms.

Neither does he raise objection to a limitation of armaments. That matter will be settled of itself, he thinks, by the economic conditions which must follow the war period, but the German colonies, he demands, must be returned without debate.

He will discuss with no one but the representative of Russia what disposition shall be made of the peoples and the lands of the Baltic provinces, with no one but the Government of France the ‚conditions' under which French territory shall be evacuated, and only with Austria what shall be

done with Poland. In the determination of all questions affecting the Balkan States he defers, a I understand him, to Austria and Turkey, and with regard to the agreements to be entered into concerning the non-Turkish peoples of the present Ottoman Empire to the Turkish authorities themselves.

After a settlement all round effected in this fashion by individual barter and concession he would have no objection, if I correctly interpret his statement, to a League of Nations which would undertake to hold the new balance of power steady against external disturbance.

It must be evident to everyone who understands what this war has wrought in the opinion and temper of the world that no general peace, no peace worth the infinite sacrifices of these years of tragical suffering, can possibly be arrived at in any such fashion. The method the German Chancellor proposes is the method of the Congress of Vienna. We cannot and will not return to that. What is at stake now is the peace of the world. What we are striving for is a new international order based upon the broad and universal principles of right and justice — no mere peace of shreds and patches.

Is it possible that Count *von Hertling* does not see that, does not grasp that he is, in fact, living in his thought in a world dead and gone? Has he utterly forgotten the Reichstag resolutions of July 19, or does he deliberately ignore them? They spoke of the conditions of a general peace, not of national aggrandisement or of arrangements between State and State.

The peace of the world depends upon the just settlement of each of the several problems to which I adverted in my recent address to Congress. I, of course, do not mean that the peace of the world depends upon the acceptance of any particular set of suggestions as to the way in which those problems are to be dealt with. I mean only that those problems each and all affect the whole world, that unless they are dealt with in a spirit of unselfish and unbiassed justice, with a view to the wishes, the natural connections, the racial aspirations, the security, and the peace of mind of the peoples involved, no permanent peace will have been attained. They cannot be discussed separately or in corners. None of them constitutes a private or separate interest from which the opinion of the world may be shut out. Whatever affects the peace affects mankind, and nothing settled by military force, if settled wrongly, is settled at all. It will presently have to be reopened.

Is Count *von Hertling* not aware that he is speaking in the court of mankind, that all the awakened nations of the world now sit in judgment on what every public man of whatever nation may say on the issues of a conflict which has spread to every region of the world? The Reichstag resolutions of July themselves frankly accepted the decisions of that court. There shall be no annexations, no contributions, no punitive damages. Peoples are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected, peoples may now be dominated and governed only by their own consent. ‚Self-determination‘ is not a mere phrase. It is an imperative principle of action which statesmen will henceforth ignore at their peril.

We cannot have a general peace for the asking, or by the mere arrangement of a peace conference. It cannot be pieced together out of individual understandings between powerful States. All the parties to this war must join in the settlement of every issue anywhere involved in it, because what we are seeking is a peace that we can all unite to guarantee and maintain, and every item of it must be submitted to the common

judgment, whether it be right and fair and an act of justice rather than a bargain between Sovereigns.

The United States has no desire to interfere in European affairs, or to act as arbiter in European territorial disputes. She would disdain to take advantage of any internal weakness or disorder to impose her will upon another people. She is quite ready to be shown that the settlements she has suggested are not the best or the most enduring. They are only her own provisional sketch of the principles and of the way in which they should be applied. But she entered this war because she was made a partner, whether she would or not, in the sufferings and indignities inflicted by the military masters of Germany against the peace and security of mankind, and the conditions of peace will touch her as nearly as they will touch any other nation to which is entrusted a leading part in the maintenance of civilisation. She cannot see her way to peace until the causes of this war are removed, and its renewal rendered as nearly as may be impossible.

This war had its roots in the disregard of the rights of small nations and of nationalities which lacked the union and the force to make good their claim to determine their own allegiance and their own forms of political life. Covenants must now be entered into which will render such things impossible for the future, and those covenants must be backed by the united force of all the nations that love justice, and are willing to maintain it at any cost. If territorial settlements and the political relations of great populations, which have not the organised power to resist, are to be determined by the contracts of powerful Governments which consider themselves most directly affected, as Count *von Hertling* proposes, why may not economic questions also? It has come about in the altered world in which we now find ourselves that justice and the rights of peoples affect the whole field of international dealing as much as access to raw materials and fair and equal conditions of trade.

Count *von Hertling* wants the essential bases of commercial and industrial life to be safeguarded by common agreement and guarantees, but he cannot expect that to be conceded him if the other matters to be determined by the articles of peace are not handled in the same way as items in the final accounting. He cannot ask for the benefit of common agreement in the one field without according it in the other. I take it for granted that he sees that separate and selfish compacts with regard to trade and essential materials of manufacture would afford no foundation for peace. Neither, he may rest assured, will separate and selfish compacts with regard to provinces and peoples.

Count *Czernin* seems to see the fundamental elements of peace with clear eyes, and does not seek to obscure them. He sees that an independent Poland, made up of all the indisputably Polish peoples who lie contiguous to one another, is a matter of European concern, and must, of course, be conceded; that Belgium must be evacuated and restored, no matter what sacrifices and concessions that may involve; and that national aspirations must be satisfied even within his own Empire in the common interest of Europe and mankind. If he is silent about questions which touch the interest and purpose of his allies more clearly than they touch those of Austria only, it must, of course, be because he feels constrained, I suppose, to defer to Germany and Turkey. In the circumstances, seeing and concluding, as he does, that the essential principles involve the necessity of candidly applying them, he naturally feels that Austria can respond to the purpose of peace as expressed by the United States with less embarrassment than could Germany. He would probably have gone much further had it not been for the embarrassments of Austria's alliances, and of her dependence upon Germany.

After all, the test of whether it is possible for either Government to go any further in this comparison of views is simple and obvious. The principles to be applied are these: —

First, that each part of the final settlement must be based upon the essential justice of that particular case, and upon such adjustments as are most likely to bring a peace that will be permanent;

Second, that peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were chattels and pawns in a game — even the great game, now for ever discredited, of the balance of power; but that

Third, every territorial settlement involved in this war must be made in the interest and for the benefit of the population concerned, and not as a part of any mere adjustment or compromise of claims amongst rival States; and

Fourth, that all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them, without introducing new or perpetuating the old elements of discord and antagonism that would be likely in time to break the peace of Europe, and consequently of the world.

A general peace erected upon such foundations can be discussed. Until such a peace can be secured we have no choice but to go on. So far as we can judge, these principles that we regard as fundamental are already everywhere accepted as imperative, except among the spokesmen of the military and annexationist party in Germany. If they have anywhere else been rejected the objectors have not been sufficiently numerous or influential to make their voices audible. The tragical circumstance is that this one party in Germany is apparently willing and able to send millions of men to their death to prevent what all the world now sees to be just.

I would not be a true spokesman of the people of the United States if I did not say once more that we entered this war upon no small occasion, and that we can never turn back from a course chosen upon principle. Our resources are in part mobilised now, and we shall not pause until they are mobilised in their entirety. Our armies are rapidly going to the fighting line, and will go more and more rapidly. Our whole strength will be put into this war of emancipation from the threat and attempted mastery of selfish groups of autocratic rulers. Whatever the difficulties and the present partial delays, we are indomitable in our power of independent action, and can in no circumstances consent to live in a world governed by intrigue and force. We believe that our own desire for a new international order under which reason and justice and the common interests of mankind shall prevail is the desire of enlightened men everywhere. Without that new order the world will be without peace, and human life will lack the tolerable conditions of existence and development. Having set our hand to the task of achieving it, we shall not turn back.

I hope it is not necessary for me to add that no word of what I have said is intended as a threat. That is not the temper of our people. I have spoken thus only that the whole world may know the true spirit of America, that men everywhere may know that our passion for justice and for self-government is no mere passion of words, but a passion which, once set in action, must be satisfied. The power of the United States is a menace to no nation or people. It will never be used in aggression, for aggrandisement of any selfish interests of our own. It springs out of freedom, and is for the service of freedom.

Nr. 2035. Das Völkerbundsprogramm des Viscount Grey of Fallodon, 11. Mai 1918. („The League of Nations. Viscount Grey of Fallodon, K. G., Oxford University Press, Humphrey Milford 1918.“ *)

There are projects that exist in a shadowy form in an atmosphere of tepid idealism, admired by those who see that if possible they would be desirable. From time to time an attempt is made to embody them in material form and make them of practical use in national or international politics. It is then discovered that what appeared as an ideal to be wholly desirable and amiable cannot be of practical use, unless we are ready to subject ourselves to some limitations or discipline that may be inconvenient, and unless we are prepared to overcome some difficulties that were not at first sight apparent. The ideal is found to have in fact a stern and disagreeable as well as an easy and amiable side to it. Thereupon a storm beats against it: those who never thought it desirable — for there are intellects to which most ideals seem dangerous and temperaments to which they are offensive — and who had previously treated it only with contempt in the abstract, offer the fiercest opposition to it as a practical proposal: many of its supporters are paralysed by the difficult aspects of it, which they had not previously considered, and the project recedes again into the region of shadows or abstract resolutions.

This, or something like this, has hitherto been the history of the ideal that has now become associated with the phrase 'A League of Nations'; but it does not follow that the history of this or of other ideals will be the same after the war as before it. There is more at stake in this war than the existence of individual States or Empires, or the fate of a Continent; the whole of modern civilization is at stake, and whether it will perish and be submerged, as has happened to previous civilizations of older types, or whether it will live and progress, depends upon whether the nations engaged in this war, and even those that are onlookers, learn the lessons that the experience of the war may teach them. It must be with nations as with individuals; in the great trials of life they must become better or worse—they cannot stand still. They must learn and profit by experience and rise to greater heights, or else sink lower and drop eventually into the abyss. And this war is the greatest trial of which there is any record in history. If the war does not teach mankind new lessons that will so dominate the thought and feeling of those who survive it, and those who succeed the survivors, as to make new things possible, then the war will be the greatest catastrophe as well as the most grievous trial and suffering of which mankind has any record.

Therefore it does not follow that a League of Nations to secure the peace of the world will remain impossible because it has not been possible hitherto, and I propose in this paper to consider shortly, to state rather than to examine (for it would take a long time to examine thoroughly), the conditions that have not been present before and that are present now, or may soon be present, and that are essential if the League of Nations is to become effective. These conditions appear to me to be as follows:

1. The idea must be adopted with earnestness and conviction by the Executive Heads of States. It must become an essential part of their practical policy, one of their chief reasons for being or continuing to be responsible

*) Als Broschüre veröffentlicht, mit dem am Schluß des Textes stehenden Datum „May 11th, 1918“. Herausgeber.

for the policy of their States. They must not adopt it only to render lip service to other persons, whom it is inconvenient or ungracious to displease. They must lead, and not follow; they must compel if necessary, and not be compelled.

This condition was not present before the war; to what extent is it present now? It is not possible to answer this question fully, but it can be answered certainly and affirmatively as regards President *Wilson*, the Executive Head of the United States, and this alone is sufficient to give new life and purpose to the idea of a League of Nations. President *Wilson* and his country have had in this matter the great advantage of having been for more than two years and a half, before April 1917, able to observe the war as neutrals, free from the intense anxiety and effort that absorb all the thought and energy of belligerents. They were able not only to observe, but to reflect and to draw conclusions. One of the conclusions has been that, if the world of which they form an important part is to be saved from what they consider disaster, they must enter the war against Germany; another has been that, if national liberty and peace are to be secure in future, there must be a League of Nations to secure them. It must not be supposed from this that the Governments of the Allies are less ready to draw, or have not already drawn, the same conclusion from the experience of the war; but their countries have been at war all the time. They have been fighting, it is true, for the same ideal of national and human liberty as the United States, but fighting also for the immediate preservation of national existence in Europe, and all their thought and energy have been concentrated upon resistance to imminent peril. Nevertheless, in this country at any rate, the project of a League of Nations has met with widespread and cordial acceptance. On the other hand, the Military party in Germany are, and must remain, opposed to it; they resent any limitation upon the use of force by Germany as fatal to German interests, for they can conceive no development, and even no security, except one based solely upon force. Any other conception is fatal, and this exclusive conception is essential to the maintenance of the power of the military party in Germany. As long, therefore, as this rule in Germany continues, Germany will oppose a League of Nations. Nothing will change this except a conviction in the German people that the use of force causes at least as much suffering to themselves as to others, and that security based upon law and treaty and a sense of mutual advantage is better than the risks, dangers, and sufferings of a will to supreme power and efforts to obtain it; and this conviction must so work upon them as to displace the military party and their policy and ideals from power in Germany.

The situation, therefore, of this first condition essential to make the League of Nations practical may be summed up as follows: It is present certainly as regards the Executive Head of the United States, which is potentially the strongest and actually the least exhausted of all the belligerent States: it either is or will at the end of the war be found to be present as regards the Governments of other countries fighting on the same side as the United States. Even among their enemies Austria has publicly shown a disposition to accept the proposal, and probably welcomes it genuinely though secretly as a safeguard for her future, not only against old enemies, but against Prussian domination.

All small States, belligerent or neutral, must naturally desire in their own interest everything that will safeguard small States as well as great from aggression and war.

There remains the opposition of Germany, where recent military succes and the ascendancy of Prussian militarism have reduced the advocates of

anything but force to silence. Germany has to be convinced that force does not pay, that the aims and policy of her military rulers inflict intolerable and also unnecessary suffering upon her; and that when the world is free from the menace of these military rulers, with their sharp swords, shining armour, and mailed fists, Germany will find peaceful development assured and preferable to expansion by war, and will realize that the condition of true security for one nation is a sense of security on the part of all nations. Till Germany feels this to be true, there can be no League of Nations in the sense intended by President *Wilson*. A League such as he desires must include Germany, and should include no nation that is not thoroughly convinced of the advantage and necessity of such a League, and is therefore not prepared to make the efforts, and, if need be, the sacrifices necessary to maintain it.

2. The second condition essential to the foundation and maintenance of a League of Nations is that the Governments and Peoples of the States willing to found it understand clearly that it will impose some limitation upon the national action of each, and may entail some inconvenient obligation. The smaller and weaker nations will have rights that must be respected and upheld by the League. The stronger nations must forgo the right to make their interests prevail against the weaker by force: and all the States must forgo the right in any dispute to resort to force before other methods of settlement by conference, conciliation, or, if need be, arbitration, have been tried. This is the limitation.

The obligation is that if any nation will not observe this limitation upon its national action; if it breaks the agreement which is the basis of the League, rejects all peaceful methods of settlement and resorts to force, the other nations must one and all use their combined force against it. The economic pressure that such a League could use would in itself be very powerful, and the action of some of the smaller States composing the League could perhaps not go beyond economic pressure, but those States that have power must be ready to use all the force, economic, military, or naval, that they possess. It must be clearly understood and accepted that defection from or violation of the agreement by one or more States does not absolve all or any of the others from the obligation to enforce the agreement.

Anything less than this is of no value. How worthless it may be can be seen by reading the debate in the House of Lords in 1867 upon the Treaty guaranteeing the neutrality of Luxemburg. It was there explained that we entered only into a collective guarantee; by this it was apparently meant that if any one of the guaranteeing Powers violated the Neutrality of Luxemburg, or even if any one of them declined to take active steps to defend it, Great Britain and the other guarantors were thereby absolved from taking any action whatever. This was contrasted at the time with the Belgian Treaty, which entailed a separate guarantee.

Hitherto the Nations of the world have made reserves in Arbitration or Conciliation agreements, showing that they were not prepared to accept the limitations upon national action that are essential to secure an effective League of Nations. An exception is the Conciliation Treaty between Great Britain and the United States negotiated before the war, but the statement made above is generally true.

The Nations have also carefully abstained from undertaking any obligation to use force to uphold the benevolent rules and agreements of general application that have been recorded at Hague Conferences; such obligation has been confined to local objects like the Neutrality of Belgium or to alliances between particular Powners made to protect or serve their special interests.

Are the Nations of the world prepared now, or will they be ready after this war, to look steadily and clearly at this aspect of the League of Nations, at the limitations and obligations that it will impose, and to say whole-hearted and convinced as they have never been before, 'We will accept and undertake them'?

Individuals in civilized States have long ago accepted an analogous limitation and obligation as regards disputes between individuals; these are settled by law, and any individual who, instead of appealing to law, resorts to force to give effect to what he considers his rights, finds himself at once opposed and restrained by the force of the State — that is, in democratic countries, by the combined force of the other individuals. And we not only accept this arrangement, but uphold it as essential to prevent oppression of one by another, to secure each person in a quiet life, and to guarantee to each the greatest liberty that is consistent with the equal liberty of neighbours. That at any rate is part of the theory and object of democratic government, and if it is not perfectly attained most of the proposals for improving it look rather to increased than to diminished State control.

But in less civilized parts of the world individuals have not reached the point of view from which this order of things seems desirable. There is a story of a native chief in Africa, who protested to a British official against having to pay any taxes. The British official explained, no doubt in the best modern manner, that these taxes were used to keep order in the country, with the result that men and women and the flocks and herds and possessions of every tribe were safe, and each could live in its own territory without fear or disturbance, and that the payment of taxes was for the good of all. The effect of this explanation was to make the chief very angry. Before the British came, he said, he could raid a neighbour, return with captives and captures of all sorts and be received in triumph by the women and the rest of his tribe when he returned. The need for protecting his own tribe from similar raids he was willing to undertake himself. 'Now', he said, 'you come here and tell me that I ought to like to pay taxes to be prevented from doing this, and that makes me mad.'

The analogy between States and individuals or groups of individuals is not perfect, but there is sufficient analogy to make it not quite irrelevant to ask, whether after this war the view held by great States of the relations desirable between themselves will be that of the African chief or that of individuals in what we call civilized Nations. Nothing but experience convinced individuals that law was better than anarchy to settle the relations between themselves. And the sanction that maintains law is the application of force with the support of the great majority of individuals behind it. Is it possible that the experienxe of this war will produce a settled opinion of the same sort to regulate the relations of States with each other and safeguard the world from war, which is in fact anarchy?

What does the experience of this war amount to? Our minds cannot grasp it all. Thought is crushed by the accumulated suffering that the war has caused and is still causing. We cannot utter all that we feel, and if it were not that our feelings are in a way stunned by the very violence of the catastrophe, as physical nerves are to some extent numbed by great blows, the human heart could not bear up and live under the trial of this war. Great must be the effect of all this: greater after even than during the war on the working of men's minds, and on human nature itself; but this is not what I intend to urge here. I will urge only one point and one that is for the head rather than the heart.

We are now in the fourth year of the war: the application of scientific knowledge and the inventions of science during the war have made it more

and more terrible and destructive each year. The Germans have abrogated all previously accepted rules of warfare. The use of poisonous gas, the firing from the sea upon open undefended towns, the indiscriminate bombing of big cities from the air were all introduced into the war by Germany. It was long before the Allies adopted any of these practices even as reprisals; but the Germans have forced a ruthless and unlimited application of scientific discovery to the destruction of human life, combatant and non-combatant. They have shown the world that now and henceforth war means this and nothing less than this. If there is to be another war in twenty or thirty years' time, what will it be like? If there is to be concentrated preparation for more war, the researches of science will be devoted henceforth to discovering methods by which the human race can be destroyed. These discoveries cannot be confined to one nation and their object of wholesale destruction will be much more completely achieved hereafter even than in this war. The Germans are not blind to this, but as far as I can see their rulers propose to avoid future wars by establishing the domination of Germany for ever. Peace can never be secured by the domination of one country securing its power and prosperity by the submission and disadvantage of others, and the German idea of a world peace secured by the power of German militarism is impracticable as well as unfair and abhorrent to other Nations. It is as intolerable and impossible in the world as despotism would be here or in the United States. In opposition to this idea of Germany, the Allies should set forth, as President *Wilson* has already set forth, the idea of a peace secured by mutual regard between States for the rights of each and a determination to stamp out any attempt at war, as they would a plague that threatened the destruction of all.

When those who accept this idea and this sort of peace can in word and deed speak for Germany, we shall be within sight of a good peace.

The establishment and maintenance of a League of Nations, such as President *Wilson* has advocated, is more important and essential to a secure peace than any of the actual terms of peace that may conclude the war: it will transcend them all. The best of them will be worth little, unless the future relations of States are to be on a basis that will prevent a recurrence of militarism in any State.

'Learn by experience or suffer' is the rule of life. We have all of us seen individuals becoming more and more a misery to themselves and others, because they cannot understand or will not accept this rule. Is it not applicable to Nations as well? And if so, have not Nations come to a great crisis in which for them the rule 'Learn or perish' will prove inexorable? All must learn the lesson of this war. The United States and the Allies cannot save the world from militarism unless Germany learns the lesson thoroughly and completely; and they will not save the world, or even themselves, by complete victory over Germany until they too have learnt and can apply the lesson that militarism has become the deadly enemy of mankind.

May 11th, 1918.

Nr. 2036. Rede Wilsons am Grabe Washingtons, 4. Juli 1918.

(**T.,** 5. VII. 1918; Nr. 41, 834, S. 7.)

Gentlemen of the Diplomatic Corps and my Fellow Citizens, —

I am happy to draw apart with you to this quiet place of old counsel in order to speak a little of the meaning of this day of our nations independence. The place seems very still and remote. It is as serene and

untouched by the hurry of the world as it was in those great days, long ago, when General *Washington* was here and held leisurely conference with the men who were to be associated with him in the creation of a nation. From these gentle slopes they looked out upon the world and saw it whole, saw it with the light of the future upon it, saw it with modern eyes that turned away from a past which men of liberated spirits could no longer endure. It is for that reason that we cannot feel even here, in the immediate presence of this sacred tomb, that this is a place of death. It was a place of achievement.

A great promise that was meant for all mankind was here given plan and reality. The associations by which we are here surrounded are the inspiriting associations of that noble death which is only a glorious consummation. From this green hillside we also ought to be able to see with comprehending eyes that world that lies about us, and should conceive anew the purposes that must set men free. It is significant — significant of their own character and purpose and of the influences they were setting afoot — that *Washington* and his associates, like the *Barons at Runnymede* spoke and acted not for a class but a people.

It has been left for us to see to it that it shall be understood that they spoke and acted not for a single people only, but for all mankind. They were thinking not of themselves and of the material interests which centred in the little groups of landowners and merchants and men of affairs with whom they were accustomed to act in Virginia and the Colonies to the north and south of her, but of a people which wished to be done with classes and special interests and the authority of men whom they had not themselves, chosen to rule over them. They entertained no private purpose, desired no peculiar privilege. They were consciously planning that men of every class should be free and America a place to which men out of every nation might resort who wished to share with them the rights and privileges of free men. And we take our cue from them, do we not? We intend what they intended.

We here in America believe our participation in this present war to be only the fruitage of what they planted. Our case differs from theirs only in this, that it is our inestimable privilege to concert with men out of every nation what shall make not only the liberties of America secure, but the liberties of every other people as well. We are happy in the thought that we are permitted to do what they would have done had they been in our place. There must now be settled once for all what was settled for America in the great age upon whose inspiration we draw to-day. This is surely a fitting place from which calmly to look out upon our task that we may fortify our spirits for its accomplishment. And this is the appropriate place from which to avow, alike to the friends who look on and to the friends with whom we have the happiness to be associated in action, the faith and purpose with which we act.

This, then, is our conception of the great struggle in which we are engaged. The plot is written plain upon every scene and every act of the supreme tragedy. On the one hand stand the peoples of the world not only the peoples actually engaged, but many others also who suffer under mastery, but cannot act; peoples of many races and in every part of the world — the people of stricken Russia among the rest, though they are for the moment unorganised and helpless. Opposed to them, masters of many armies, stand an isolated, friendless group of Governments who speak no common purpose but only selfish ambitions of their own by which none can profit but themselves, and whose people are fuel in their hands; Governments which fear their people and yet are for the time their sovereign lords, making every choice for them and disposing of their lives and fortunes as they will as

well as of the lives and fortunes of every people who fall under their power; Governments clothed with the strange trappings and the primitive authority of an age that is altogether alien and hostile to our own.

The past and the present are in deadly grapple and the peoples of the world are being done to death between them. There can be but one issue. The settlement must be final. There can be no compromise. No half-way decision would be tolerable. No half-way decision is conceivable. These are the ends for which the associated peoples of the world are fighting and which must be conceded them before there can be peace: first, the destruction of every arbitrary power anywhere that can separately, secretly, and of its single choice disturb the peace of the world, or, if it cannot be presently destroyed, at the least its reduction to virtual impotence. Second, the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.

Third, the consent of all nations to be governed in their conduct towards each other by the same principles of honour and of respect for the common law of civilised society that govern the individual citizens of all modern States, and in their relations with one another, to the end that all promises and covenants may be sacredly observed, no private plots or conspiracies hatched, no selfish injuries wrought with impunity, and a mutual trust established upon the handsome foundation of a mutual respect for right. Fourth, the establishment of an organisation of peace which shall make it certain that the combined power of free nations will check every invasion of right and serve to make peace and justice the more secure by affording a definite tribunal of opinion to which all must submit and by which every international readjustment that cannot be amicably agreed upon by the peoples directly concerned shall be sanctioned. These great objects can be put into a single sentence.

What we seek is the reign of law based upon the consent of the governed and sustained by the organised opinion of mankind. These great ends cannot be achieved by debating and seeking to reconcile and accommodate what statesmen may wish, with their projects for balances of power and of national opportunity. They can be realised only by the determination of what the thinking peoples of the world desire, with their longing hope for justice and for social freedom and opportunity. I can fancy that the air of this place carries the accents of such principles with a peculiar kindness. Here were started forces which the great nation against which they were primarily directed at first regarded as a revolt against, its rightful authority, but which it has long since seen to have been a step in the liberation of its own people as well as of the people of the United States.

And I stand here now to speak, speak proudly and with confident hope, of the spread of this revolt, this liberation to the great stage of the world itself. The blinded rulers of Prussia have aroused forces they knew little of, forces which once roused can never be crushed to earth again, for they have at their heart an inspiration and a purpose which are deathless and of the very stuff of triumph.

Nr. 2037. Rede Wilsons an seine Mitbürger in New York (fünf Punkte), 27. September 1918.

(**T.,** 28. IX. 1918; Nr. 41, 907, S. 6 u. 8.)

My fellow citizens: I am not here to promote the Loan. That will be done, — ably and enthusiastically done, — by the hundreds of thousands of loyal and tireless men and women who have undertaken to present it to you and to our fellow citizens throughout the country, and I have not the least doubt of their complete success; for I know their spirit and the spirit of the country. My confidence is confirmed, too, by the thoughtful and experienced cooperation of the bankers here and everywhere, who are lending their invaluable aid and guidance. I have come, rather, to seek an opportunity to present to you some thoughts which I trust will serve to give you, in perhaps fuller measure than before, a vivid sense of the great issue involved, in order that you may appreciate and accept with added enthusiasm the great significance of the duty of supporting the Government by your men and your means to the utmost point of sacrifice and self-denial. No man or woman who has really taken in what this war means can hesitate to give to the very limit of what they have; and it is my mission here to night to try to make it clear once more what the war really means. You will need no other stimulation or reminder of your duty.

At every turn of the war we gain a fresh consciousness of what we mean to accomplish by it. When our hope and expectation are most excited we think more definitely than before of the issues that hang upon it and of the purposes which must be realized by means of it. For it has positive and well-defined purposes which we did not determine and which we cannot alter. No statesman or assembly created them; no statesman or assembly can alter them. They have arisen out of the very nature and circumstances of the war. The most that statesmen or assemblies can do is to carry them out or be false to them. They were perhaps not clear at the outset, but they are clear now. The war has lasted more than four years and the whole world has been drawn into it. The common will of mankind has been substituted for the particular purposes of individual states. Individual statesmen may have started the conflict, but neither they nor their opponents can stop it as they please. It has become a peoples' war, and peoples of all sorts and races, of every degree of power and variety of fortune, are involved in its sweeping processes of change and settlement. We came into it when its character had become fully defined and it was plain that no nation could stand apart or be indifferent to its outcome. Its challenge drove to the heart of everything we cared for and lived for. The voice of the war had become clear and gripped our hearts. Our brothers from many lands, as well as our own murdered dead under the sea, were calling to us, and we responded, fiercely and of courage.

The air was clear about us. We saw things in their full, convincing proportions as they were; and we have seen them with steady eyes and unchanging comprehension ever since. We accepted the issues of the war as facts, not as any group of men either here or elsewhere had defined them, and we can accept no outcome which does not squarely meet and settle them. These issues are these:

Shall the military power of any nation or group of nations be suffered to determine the fortunes of peoples over whom they have no right to rule except the right of force?

Shall strong nations be free to wrong weak nations and make them subject to their purposes and interest?

Shall peoples be ruled and dominated, even in their own internal affairs, by arbitrary and irresponsible force or by their own will and choice?

Shall there be a common standard of right and privilege for all peoples and nations or shall the strong do as they will and the weak suffer without redress?

Shall the assertion of right be hazarded by casual alliance or shall there be a common concert to oblige the observance of common rights?

No man, no group of men, chose these to be the issues of the struggle. They are the issues of it; and they must be settled, by no arrangement or compromise or adjustment of interests, but definitely and once for all and with a full and unequivocal acceptance of the principle that the interest of the weakest is as sacred as the interest of the strongest.

This is what we mean when we speak of a permanent peace, if we speak sincerely, intelligently, and with a real knowledge and comprehension of the matter we deal with.

We are all agreed that there can be no peace obtained by any kind of bargain or compromise with the Governments of the Central Empires, because we have dealt with them already and have seen them deal with other Governments that were parties to this struggle, at Brest-Litovsk and Bucharest. They have convinced us that they are without honor and do not intend justice. They observe no covenants, accept no principle but force and their own interest. We cannot „come to terms" with them. They have made it impossible. The German people must by this time be fully aware that we cannot accept the word of those who forced this war upon us. We do not think the same thoughts or speak the same language of agreement.

It is of capital importance that we should also be explicitly agreed that no peace shall be obtained by any kind of compromise or abatement of the principles we have avowed as the principles for which we are fighting. There should exist no doubt about that. I am, therefore, going to take the liberty of speaking with the utmost frankness about the tactical implications that are involved in it.

If it be indeed and in truth the common objects of the Governments associated against Germany and of the nations whom they govern, as I believe it to be, to achieve by the coming settlements a secure and lasting peace, it will be necessary that all who sit down at the peace table shall come ready and willing to pay the price, the only price, that will procure it; and ready and willing, also, to create in some virile fashion the only instrumentality by which it can be made certain that the agreements of the peace will be honored and fulfilled.

That price is impartial justice in every item of the settlement, no matter whose interest is crossed; and not only impartial justice but also the satisfaction of the several peoples whose fortunes are dealt with. That indispensible instrumentality is a league of Nations formed under covenants that will be efficacious. Without such an instrumentality, by which the peace of the world can be guaranteed, peace will rest in part upon the word of outlaws and only upon that word. For Germany will have to redeem her character, not by what happens at the peace table but what follows.

And, as I see it, the constitution of that League of Nations and the clear definition of its objects must be a part, in a sense the most essential part, of the peace settlement itself. It cannot be formed now. If formed now, it would be merely a new alliance confined to the nations associated against a common enemy. It is not likely that it could be formed after the settlement. It is necessary to guarantee the peace; and the peace cannot be guaranteed as an afterthought. The reason, to speak in plain terms again, why it must be guaranteed is that there will be parties to the peace whose

promises have proved untrustworthy, and means must be found in connection with the peace settlement itself to remove that source of insecurity. It would be folly to leave the guarantee to the subsequent voluntary action of the Governments we have seen destroy Russia and deceive Roumania.

But these general terms do not disclose the whole matter. Some details are needed to make them sound less like a thesis and more like a practical programme. These, then, are some of the particulars, and I state them with the greater confidence because I can state them authoritatively as representing this Government's interpretation of its own duty with regard to peace: first, the impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just. It must be a justice that plays no favorites and knows no standards but the equal rights of the several peoples concerned; second, no special or separate interest of any single nation or any group of nations can be made the basis of any part of the settlement which is not consistent with the common interests of all; third, there can be no leagues or alliances or special covenants and understandings within the general and common family of the League of Nations; fourth, and more specifically, there can be no special, selfish economic combinations within the League and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world, be vested in the League of Nations itself as a means of discipline and control; fifth, all international agreements and treaties of every kind must be made known in their entirety to the rest of the world.

Special alliances and economic rivalries and hostilities have been the prolific source in the modern world of the plans and passions that produce war. It would be an insincere as well as an insecure peace that did not exclude them in definite and binding terms.

The confidence with which I venture to speak for our people in these matters does not spring from our traditions merely and the well known principles of international action which we have always professed and followed. In the same sentence in which I say that the United States will enter into no special arrangements or understandings with particular nations, let me say also that the United States is prepared to assume its full share of responsibility for the maintenance of the common covenants and understandings upon which peace must henceforth rest. We still read *Washington's* immortal warning against 'entangling alliances' with full comprehension and an answering purpose. But only special and limited alliances entangle; and we recognize and accept the duty of a new day in which we are permitted to hope for a general alliance which will avoid entanglements and clear the air of the world for common understanding and the maintenance of common rights.

I have made this analysis of the international situation which the war has created, not, of course, because I doubted whether the leaders of the great nations and peoples with whom we are associated were of the same mind and entertained a like purpose, but because the air every now and again gets darkened by mists and groundless doubting and mischievous perversions of counsel and it is necessary once and again to sweep all the irresponsible talk about peace intrigues and weakening morale and doubtful purposes on the part of those in authority utterly, and if need be unceremoniously aside and say things in the plainest words that can be found, even when it is only to say over again what has been said before, quite as plainly if in less varnished terms.

As I have said, neither I nor any other man in governmental authority created or gave form to the issues of this war. I have simply responded to them with such vision as I could command. But I have responded gladly

and with a resolution that has grown warm and more confident as the issues have grown clearer and clearer. It is now plain that they are issues which no man can pervert unless it be wilfully. I am bound to fight for them, and fight for them as time and circumstance have revealed them to me as to all the world. Our enthusiasm for them grows more and more irresistible as they stand out in more and more vivid and unmistakable outline.

And the forces that fight for them draw into closer and closer array, organize their millions into more and more unconquerable migt, as they become more and more distinct to the thought and purpose of the peoples engaged. It is the peculiarity of this great war that while statesmen have seemed to cast about for definitions of their purpose and have sometimes seemed to shift their ground and their point of view, the thought of the mass of men, whom statesmen are supposed to instruct and lead, has grown more and more unclouded, more and more certain of what it is that they are fighting for. National purposes have fallen more and more into the background and the common purpose of enlightened mankind has taken their place. The counsels of plain men have become on all hands more simple and straightforward and more unified than the counsels of sophisticated men of affairs, who still retain the impression that they are playing a game of power and playing for high stakes. That is why I have said that this is a peoples' war, not a statesmen's. Statesmen must follow the clarified common thought or be broken.

I take that to be the significance of the fact that assemblies and associations of many kinds made up of plain workaday people have demanded, almost every time they came together, and are still demanding, that the leaders of the Governments declare to them plainly what it is, exactly what it is, that they were seeking in this war and what they think the items of their final settlement should be. They are not yet satisfied with what they have been told. They still seem to fear that they are getting what they ask for only in statemen's terms, — only in the terms of territorial arrangements and discussions of power, and not in terms of broad-visioned justice and mercy and peace and the satisfaction of these deep-seated longings of oppressed and distracted men and women and enslaved peoples that seem to them the only things worth fighting a war for that engulfs the world. Perhaps statesmen have not always recognized this changed aspect of the whole world of policy and action. Perhaps they have not always spoken in direct reply to the question asked because they did not know how searching these questions were and what sort of answers they demanded.

But I, for one, am glad to attempt the answer again and again, in the hope that I may make it clearer and clearer that my one thought is to satisfy those who struggle in the ranks, and are, perhaps above all others, entitled to a reply whose meaning no one can have any excuse for misunderstanding, if he understands the language in which it is spoken or can get some one to translate it correctly into his own. And I believe that the leaders of the Governments with which we are associated will speak as they have occasions, as plainly as I have tried to speak. I hope that they will feel free to say whether they think that I am in any degree mistaken in my interpretation of the issues involved or in my purpose with regard to the means by which a satisfactory settlement of these issues may be obtained. Unity of purpose and of counsel are as imperatively necessary in this war as was unity of command in the battlefield; and with perfect unity of purpose and counsel will come assurance of complete victory. It can be had in no other way. „Peace drives“ can be effectively neutralized and silenced only by showing that every victory of the nations associated against Germany brings the nations nearer the sort of peace which will bring security and

reassurance to all people and make the recurrence of another such struggle of pitiless force and bloodshed forever impossible, and that nothing else can. Germany is constantly intimating the „terms“ she will accept; and always finds that the world does not want terms of peace. It wishes the final triumph of justice and fair dealing.

Nr. 2038. Sonderfriedensnote Oesterreich-Ungarns an die Regierungen aller kriegführenden Staaten, 14. September 1918. Uebermittelt durch die schwedischen Gesandtschaften am 16. September 1918.

(**N. F. P.***), 15. IX. 1918; Nr. 19417, I.)

Bien que déclinée par les Puissances ennemies, l'offre de paix faite, le 12 décembre, 1916, par les quatre Puissances alliées et dont elles n'ont jamais abandonné l'idée conciliatrice qui l'avait inspirée, a néanmoins inauguré une nouvelle phase dans l'histoire de cette guerre. A partir de cette date, la question de la paix se trouva, après deux ans et demi d'une lutte acharnée, subitement placée au centre de la discussion européenne, voire mondiale, qu'elle domine, depuis, d'une façon toujours croissante. Dès lors presque tous les États belligérants ont à maintes reprises émis leur opinion quant à la base possible et aux conditions de la paix. Cette discussion n'a cependant pas été poursuivie sur la même ligne: les points de vue changeaient selon la situation militaire et politique. Aussi n'est-on pas, jusqu'à ce jour du moins, arrivé à un résultat palpable, ni pratique. Malgré toutes ces fluctuations, on peut tout de même constater que la distance entre les points de vue des deux partis a plutôt diminuée, et, sans vouloir nier les grandes divergences d'opinion qui séparent les deux camps ennemis, divergences qui n'ont jusqu'à présent pas pu être concilées, il est pourtant permis de remarquer qu'on s'est éloigné de quelques buts de guerre extrêmes, et qu'il existe un certain accord quant à la base fondamentale d'une paix universelle. Il n'y a aucun doute que, de part et d'autre, le désir des peuples de s'entendre et d'arriver à la paix se manifeste de plus en plus. On gagne la même impression si l'on compare l'accueil fait jadis à la proposition de paix des quatre Puissances alliées aux énonciations ultérieures de leurs adversaires, que ces énonciations soient émanées des hommes d'État responsables ou bien de personnages non officiels jouissant également d'une influence politique.

Pour ne citer que quelques exemples: Les Alliés ont, dans leur réponse à la note du Président *Wilson*, émis des pretentions qui ne signifiaient rien de moins que le démembrement de l'Autriche-Hongrie, la mutilation de l'Allemagne et le changement radical de sa structure politique, ainsi que l'anéantissement de la Turquie européenne. Par la suite, ces conditions, irréalisables sans une victoire écrasante, furent modifiées ou en partie abandonnées par quelques-unes des déclarations officielles de l'Entente.

C'est ainsi que, l'année dernière, Mr. *Balfour* déclara nettement au Parlement anglais que l'Autriche-Hongrie devait résoudre elle-même ses problèmes intérieurs et qu'on ne saurait, par des influences étrangères, octroyer à l'Allemagne une autre constitution. Puis Mr. *Lloyd George* annonça, au commencement de cette année, que les Alliés ne se battaient pas pour de-

*) Neue Freie Presse (angeführt als **N. F. P.**); vgl. auch *Miscellaneous* No. 21 (1918). *Note addressed by the Austro-Hungarian Government to the Governments of all the Belligerent States.* September 1918.
Herausgeber.

membrer l'Autriche-Hongrie, ni pour dépouiller l'Empire ottoman de ses provinces de nationalité turque, ni, enfin, pour réformer l'Allemagne à l'intérieur. Ajoutons encore que Mr. *Balfour* a, en décembre 1917, repoussé catégoriquement la supposition que la politique anglaise se serait engagée à créer un État indépendant comprenant les territoires de l'Allemagne situés sur la rive gauche du Rhin.

Quant aux énonciations des Puissances centrales, elles ne laissent aucun doute que ces États ne luttent pour défendre l'intégrité et la sécurité de leur territoire, bien plus qu'à l'égard des buts de guerre concrets. Un certain rapprochement s'est manifesté en ce qui concerne les principes qui serviraient de base pour conclure la paix, et pour établir un nouvel ordre de choses en Europe et dans le monde entier. A ce sujet, le Président *Wilson* a formulé, dans ses discours du 12 février et du 4 juillet, 1918, des principes contre lesquels ses Alliés ne se sont pas prononcés et dont l'application, dans une large mesure, ne rencontrera guère d'objection de la part des quatre Alliés, pourvu que cette application soit universelle et conciliable avec les intérêts vitaux des États en cause.

Toutefois, il ne suffirait pas de tomber d'accord sur les principes généraux: il s'agirait, en plus, de s'entendre sur la manière de les interpréter, et de les appliquer aux différentes questions concrètes de guerre et de paix. Quiconque observe les événements sans parti-pris ne saurait douter que, dans tous les États belligérants sans exception, le désir d'arriver à une paix de compromis a fortement augmenté et que la conviction se confirme, de plus en plus, que, si cette lutte sanglante continuait, l'Europe tomberait en ruines et se trouverait épuisée à tel point que son développement serait paralysé pour des dizaines d'années, et cela sans la moindre garantie d'obtenir ainsi une décision par la force des armes — décision que quatre années d'efforts, de souffrance et d'immenses sacrifices n'ont pu amener. Or, par quel moyen et de quelle manière pourrait-on préparer et finalement obtenir pareil compromis? Peut-on sérieusement espérer d'atteindre ce but en continuant à suivre la méthode employée jusqu'ici pour discuter le problème de la paix? Nous n'oserions répondre affirmativement à cette question. La discussion telle que l'ont pratiquée jusqu'à présent, d'une tribune à l'autre, les hommes d'État des différents pays, n'était au fond qu'une série de monologues; elle n'était surtout pas menée d'une façon suivie, les différents discours et les arguments développés par les orateurs des deux camps opposés restaient sans réplique immédiate et directe. En plus, la publicité de ces déclarations et le terrain où elles furent prononcées rendaient impossible tout progrès utile. Dans de pareilles énonciations publiques on se sert d'un genre d'éloquence retentissante qui veut agir sur les masses qu'on le veuille ou non; on élargit ainsi la distance entre les vues opposées; des malentendus difficiles à déraciner surgissent et un échange d'idées simple et loyal se trouve entravé, à paine énoncé, et avant même que l'adversaire ait pu y répondre officiellement toute déclaration des hommes d'État au pouvoir est discutée passionnément et avec exagération par des personnes non responsables. Mais les hommes d'État, eux aussi, sont hantés par la crainte d'exercer une influence défavorable sur l'opinion publique de leurs pays et de compromettre par là les chances à la guerre, ainsi que de dévoiler trop tôt leurs vraies intentions; voilà pourquoi ils se servent de phrases sonnantes et s'obstinent à maintenir des points de vues intransigeants.

Si l'on voulait donc chercher la base d'un compromis propre à finir la guerre dont la prolongation ne serait plus désormais qu'un suicide, et à sauver l'Europe de cette catastrophe, on devrait, dans tous les cas, avoir recours à une autre méthode permettant une conversation suivie et directe entre les représentants des Gouvernements, et uniquement entre eux. Un

pareil échange d'idées s'étendrait tout autant sur les vues contraires des différents États belligérants que sur les principes généraux servant de base à la paix et aux rapports à établir entre les États, et pourrait amener tout d'abord une entente sur ces principes. L'accord sur les principes fondamentaux une fois obtenu, il faudrait tâcher, au cours des pourparlers, de les appliquer d'une manière concrète aux différentes questions de paix et d'en amener la solution.

Nous aimons à espérer qu'aucun des belligérants n'élèvera d'objection contre un tel échange d'idées. Les opérations militaires ne seraient pas interrompues; la conversation n'irait pas plus loin que ne le jugeraient utile ceux qui y prendraient part. Aucun inconvénient ne pourrait en résulter pour les parties intéressées. Loin de pouvoir nuire, l'échange de vues ne saurait qu'être favorable à la cause de la paix: ce qui ne réussirait pas du premier coup pourrait être essayé à nouveau. On aura du moins contribué à élucider les problèmes. Que des malentendus invétérés ne pourrait-on pas dissiper! Que de nouvelles conceptions ne se frayeraient leur chemin! Les sentiments humanitaires si longtemps refoulés jailliraient des cœurs créant une atmosphère plus chaude qui, en sauvegardant tout ce qui est essentiel, ferait disparaître bien des divergences de vues qui paraissent importantes à l'heure qu'il est. Selon notre conviction, tous les belligérants le doivent à l'humanité d'examiner, en commun, s'il ne serait pas possible, après tant d'années d'une lutte qui, malgré tous les sacrifices, est restée indécise, et dont tout le décours paraît imposer un compromis, de mettre un terme à cette terrible guerre.

Le Gouvernement Impérial et Royal revient donc proposer aux Gouvernements de tous États belligérants d'envoyer prochainement dans un pays neutre, après s'être mis d'accord sur la date, et l'endroit, des délégués pour entamer une conversation d'un caractère confidentiel et non obligatoire sur les principes fondamentaux d'une paix à conclure. Ces délégués auraient pour mandat de se communiquer réciproquement les vues de leurs Gouvernements quant aux principes susdits, et de se renseigner mutuellement, avec toute liberté et franchise, sur tous les points qui demanderaient à être prévues.

Nr. 2039. Antwort der Vereinigten Staaten auf die Friedensnote Oesterreich-Ungarns. Lansing an den schwedischen Gesandten, 17. September 1918.

(**A. J. S.** 13*), S. 76.)

Department of State, Washington, September 17, 1918.

Sir:

I have the honor to acknowledge the receipt of your note, dated September 16th, communicating to me a note from the Imperial Government of Austria-Hungary, containing a proposal to the governments of all the belligerent states to send delegates to a confidential and unbinding discussion on the basic principles for the conclusion of peace. Furthermore, it is proposed that the delegates would be charged to make known to one another the conception of their governments regarding these principles and to receive

*) *Supplement to the American Journal of International Law, Vol. 13, Nr. 2, April 1919. Official Documents.*

(Angeführt als **A. J. S.** 13.)

Herausgeber.

analogous communications, as well as to request and give frank and candid explanations on all those points which need to be precisely defined.

In reply I beg to say that the substance of your communication has been submitted to the President, who now directs me to inform you that the Government of the United States feels that there is only one reply which it can make to the suggestion of the Imperial Austro-Hungarian Government. It has repeatedly and with entire candor stated the terms upon which the United States would consider peace and can and will entertain no proposal for a conference upon a matter concerning which it has made its position and purpose so plain.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) *Robert Lansing.*

Mr. *W. A. F. Ekengren,*
Minister of Sweden,
in Charge of Austro-Hungarian Interests.

Nr. 2040. Erste deutsche Note an Wilson mit Friedensangebot, 3. Oktober 1918.

(**Vorg. W.** *) Nr. 34.)

Die deutsche Regierung ersucht den Präsidenten der Vereinigten Staaten von Amerika, die Herstellung des Friedens in die Hand zu nehmen, alle kriegführenden Staaten von diesem Ersuchen in Kenntnis zu setzen und sie zur Entsendung von Bevollmächtigten zwecks Anbahnung von Verhandlungen einzuladen. Sie nimmt das von dem Präsidenten der Vereinigten Staaten von Amerika in der Kongreßbotschaft vom 8. Januar 1918 und in seinen späteren Kundgebungen, namentlich der Rede vom 27. September aufgestellte Programm **) als Grundlage für die Friedensverhandlungen an.

Um weiteres Blutvergießen zu vermeiden, ersucht die deutsche Regierung den sofortigen Abschluß eines Waffenstillstandes zu Lande, zu Wasser und in der Luft herbeizuführen.

gez. *Max*, Prinz von Baden,
Reichskanzler.

Nr. 2041. Wilsons erste Antwort an Deutschland. Lansing an den Geschäftsträger der Schweiz, 8. Oktober 1918.

(**A. J. S.** 13, S. 86—87.)

Department of State, Washington, October 8, 1918.

Sir:

I have the honor to acknowledge, on behalf of the President, your note of October 6th, enclosing a communication from the German Government to the President; and I am instructed by the President to request you to make the following communication to the Imperial German Chancellor:

Before making reply to the request of the Imperial German Government, and in order that that reply shall be as candid and straightforward

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*) Vorgeschichte des Waffenstillstands. Amtliche Urkunden, herausgegeben im Auftrage des Reichsministeriums von der Reichskanzlei. Berlin 1919. Verlag von *R. Hobbing.*
(Angeführt als **Vorg. W.**)
Herausgeber.

**) Siehe oben S. 280 Anmerkung. — Herausgeber.

as the momentous interests involved require, the President of the United States deems it necessary to assure himself of the exact meaning of the note of the Imperial Chancellor. Does the Imperial Chancellor mean that the Imperial German Government accepts the terms laid down by the President in his address to the Congress of the United States on the eighth of January last and in subsequent addresses. and that its object in entering into discussions would be only to agree upon the practical details of their application?

The President feels bound to say with regard to the suggestion of an armistice that he would not feel at liberty to propose a cessation of arms to the governments with which the Government of the United States is associated against the Central Powers so long as the armies of those Powers are upon their soil. The good faith of any discussion would manifestly depend upon the consent of the Central Powers immediately to withdraw their forces everywhere from invaded territory.

The President also feels that he is justified in asking whether the Imperial Chancellor is speaking merely for the constituted authorities of the Empire who have so far conducted the war. He deems the answers to these questions vital from every point of view.

Accept, Sir, the renewed assurances of my high consideration.

(Signed) *Robert Lansing.*

Mr. *Frederick Oederlin,*
Chargé d'Affaires of Switzerland ad interim,
in charge of German interests in the United States.

Nr. 2042. Zweite deutsche Note an Wilson, 12. Oktober 1918.

(**Vorg. W.** Nr. 47.)

Berlin, den 12. Oktober 1918.

In Beantwortung der Fragen des Präsidenten der Vereinigten Staaten von Amerika erklärt die deutsche Regierung:

Die deutsche Regierung hat die Sätze angenommen, die Präsident *Wilson* in seiner Ansprache vom 8. Januar 1918 und in seinen späteren Ansprachen als Grundlagen eines dauernden Rechtsfriedens niedergelegt hat. Der Zweck der einzuleitenden Besprechungen wäre also lediglich der, sich über die praktischen Einzelheiten ihrer Anwendung zu verständigen.

Die deutsche Regierung nimmt an, daß auch die Regierungen der mit den Vereinigten Staaten verbundenen Mächte sich auf den Boden der Kundgebung des Präsidenten *Wilson* stellen.

Die deutsche Regierung erklärt sich im Einverständnis mit der österreichungarischen Regierung bereit, zur Herbeiführung eines Waffenstillstandes dem Räumungsvorschlage des Präsidenten zu entsprechen. Sie stellt dem Präsidenten anheim, den Zusammentritt einer gemischten Kommission zu veranlassen, der es obliegen würde, die zur Räumung erforderlichen Vereinbarungen zu treffen.

Die jetzige deutsche Regierung, die die Verantwortung für den Friedensschritt trägt, ist gebildet durch Verhandlungen und in Uebereinstimmung mit der großen Mehrheit des Reichstages. In jeder seiner Handlungen gestützt auf den Willen dieser Mehrheit, spricht der Reichskanzler im Namen der deutschen Regierung und des deutschen Volkes.

gez. *Solf,*
Staatssekretär des Auswärtigen Amtes.

Nr. 2043. Wilsons zweite Antwort an Deutschland. Lansing an den Geschäftsträger der Schweiz, 14. Oktober 1918.

(**A. J. S.** 13, S. 88–89.)

Department of State, Washington, October 14, 1918.

Sir:

In reply to the communication of the German Government, dated the 12th instant, which you handed me today, I have the honor to request you to transmit the following answer:

The unqualified acceptance by the present German Government and by a large majority of the German Reichstag of the terms laid down by the President of the United States of America in his address to the Congress of the United States on the eighth of January, 1918, and in his subsequent addresses justifies the President in making a frank and direct statement of his decision with regard to the communications of the German Government of the eighth and twelfth of October, 1918.

It must be clearly understood that the process of evacuation and the conditions of an armistice are matters which must be left to the judgment and advice of the military advisers of the Government of the United States and the Allied Governments, and the President feels it his duty to say that no arrangement can be accepted by the Government of the United States which does not provide absolutely satisfactory safeguards and guarantees of the maintenance of the present military supremacy of the armies of the United States and of the Allies in the field. He feels confident that he can safely assume that this will also be the judgment and decision of the Allied Governments.

The President feels that it is also his duty to add that neither the Government of the United States nor, he is quite sure, the governments with which the Government of the United States is associated as a belligerent will consent to consider an armistice so long as the armed forces of Germany continue the illegal and inhumane practices which they still persist in. At the very time that the German Government approaches the Government of the United States with proposals of peace its submarines are engaged in sinking passenger ships at sea, and not the ships alone but the very boats in which their passengers and crews seek to make their way to safety; and in their present enforced withdrawal from Flanders and France the German armies are pursuing a course of wanton destruction which has always been regarded as in direct violation of the rules and practices of civilized warfare. Cities and villages, if not destroyed, are being stripped of all they contain, not only but often of their very inhabitants. The nations associated against Germany cannot be expected to agree to a cessation of arms while acts of inhumanity, spoliation, and desolation are being continued which they justly look upon with horror and with burning hearts.

It is necessary, also, in order that there may be no possibility of misunderstanding, that the President should very solemnly call the attention of the Government of Germany to the language and plain intent of one of the terms of peace which the German Government has now accepted. It is contained in the address of the President delivered at Mount Vernon on the fourth of July last. It is as follows: „The destruction of every arbitrary power anywhere that can separately, secretly, and of its single choice disturb the peace of the world; or, if it cannot be presently destroyed, at least its reduction to virtual impotency.“ The power which has hitherto controlled the German nation is of the sort here described. It is within the choice of the German nation to alter it. The President's words just quoted naturally

constitute a condition precedent to peace, if peace is to come by the action of the German people themselves. The President feels bound to say that the whole process of peace will, in his judgment, depend upon the definiteness and the satisfactory character of the guarantees which can be given in this fundamental matter. It is indispensable that the governments associated against Germany should know beyond a peradventure with whom they are dealing.

The President will make a separate reply to the Royal and Imperial Government of Austria-Hungary.

Accept, Sir, the renewed assurances of my high consideration.

(Signed) *Robert Lansing.*

Mr. *Frederick Oederlin,*
Chargé d'Affaires of Switzerland ad interim,
in charge of German interests in the United States.

Nr. 2044. Dritte deutsche Note an Wilson, 20. Oktober 1918.

(**Vorg. W.** Nr. 64.)

Berlin, den 20. Oktober 1918.

Die deutsche Regierung ist bei der Annahme des Vorschlages zur Räumung der besetzten Gebiete davon ausgegangen, daß das Verfahren bei dieser Räumung und die Bedingungen des Waffenstillstandes der Beurteilung militärischer Ratgeber zu überlassen sei und daß das gegenwärtige Kräfteverhältnis an den Fronten den Abmachungen zugrunde zu legen ist, die es sichern und verbürgen. Die deutsche Regierung gibt dem Präsidenten anheim, zur Regelung der Einzelheiten eine Gelegenheit zu schaffen. Sie vertraut darauf, daß der Präsident der Vereinigten Staaten keine Forderungen gut heißen wird, die mit der Ehre des deutschen Volkes und mit der Anbahnung eines Friedens der Gerechtigkeit unvereinbar sein würden.

Die deutsche Regierung legt Verwahrung ein gegen den Vorwurf ungesetzlicher und unmenschlicher Handlungen, der gegen die deutschen Land- und Seestreitkräfte und damit gegen das deutsche Volk erhoben wird.

Zerstörungen werden zur Deckung eines Rückzuges immer nötig sein und sind insoweit völkerrechtlich gestattet. Die deutschen Truppen haben die strengste Weisung, das Privateigentum zu schonen und für die Bevölkerung nach Kräften zu sorgen. Wo trotzdem Ausschreitungen vorkommen, werden die Schuldigen bestraft.

Die deutsche Regierung bestreitet auch, daß die deutsche Marine bei Versenkung von Schiffen Rettungsboote nebst ihren Insassen absichtlich vernichtet habe.

Die deutsche Regierung schlägt vor, in allen diesen Punkten den Sachverhalt durch neutrale Kommissionen aufklären zu lassen.

Um alles zu verhüten, was das Friedenswerk erschweren könnte, sind auf Veranlassung der deutschen Regierung an sämtliche Unterseebootkommandanten Befehle ergangen, die eine Torpedierung von Passagierschiffen ausschließen, wobei jedoch aus technischen Gründen eine Gewähr nicht dafür übernommen werden kann, daß dieser Befehl jedes auf See befindliche Unterseeboot vor seiner Rückkehr erreicht.

Als grundlegende Bedingung für den Frieden bezeichnet der Präsident die Beseitigung jeder auf Willkür beruhenden Macht, die für sich, unkontrolliert und aus eigenem Empfinden den Frieden der Welt stören kann. Darauf antwortet die deutsche Regierung: Im Deutschen Reich stand der Volksvertretung ein Einfluß auf die Bildung der Regierung bisher nicht zu. Die

Verfassung sah bei der Entscheidung über Krieg und Frieden eine Mitwirkung der Volksvertretung nicht vor. In diesen Verhältnissen ist ein grundlegender Wandel eingetreten. Die neue Regierung ist in völliger Uebereinstimmung mit den Wünschen der aus dem gleichen, allgemeinen, geheimen und direkten Wahlrecht hervorgegangenen Volksvertretung gebildet. Die Führer der großen Parteien des Reichstags gehören zu ihren Mitgliedern. Auch künftig kann keine Regierung ihr Amt antreten oder weiterführen, ohne das Vertrauen der Mehrheit des Reichstages zu besitzen. Die Verantwortung des Reichskanzlers gegenüber der Volksvertretung wird gesetzlich ausgebaut und sichergestellt. Die erste Tat der neuen Regierung ist gewesen, dem Reichstag ein Gesetz vorzulegen, durch das die Verfassung des Reiches dahin geändert wird, daß zur Entscheidung über Krieg und Frieden die Zustimmung der Volksvertretung erforderlich ist.

Die Gewähr für die Dauer des neuen Systems ruht aber nicht nur in den gesetzlichen Bürgschaften, sondern auch in dem unerschütterlichen Willen des deutschen Volkes, das in seiner großen Mehrheit hinter diesen Reformen steht und deren energische Fortführung fordert.

Die Frage des Präsidenten, mit wem er und die gegen Deutschland verbündeten Regierungen es zu tun haben, wird somit klar und unzweideutig dahin beantwortet, daß das Friedens- und Waffenstillstandsangebot ausgeht von einer Regierung, die, frei von jedem willkürlichen und unverantwortlichen Einfluß, getragen wird von der Zustimmung der überwältigenden Mehrheit des deutschen Volkes.

gez. *Solf.*

Nr. 2045. Wilsons dritte Antwort an Deutschland. Lansing an den Geschäftsträger der Schweiz, 23. Oktober 1918.

(**A. J. S.** 13, S. 92—93.)

Department of State, Washington, October 23, 1918.

Sir:

I have the honor to acknowledge the receipt of your note of the twenty-second transmitting a communication under date of the twentieth from the German Government and to advise you that the President has instructed me to reply thereto as follows:

Having received the solemn and explicit assurance of the German Government that it unreservedly accepts the terms of peace laid down in his address to the Congress of the United States on the eighth of January, 1918, and the principles of settlement enunciated in his subsequent addresses, particularly the address of the twenty-seventh of September, and that it desires to discus the details of their application, and that this wish and purpose emanate, not from those who have hitherto dictated German policy and conducted the present war on Germany's behalf, but from ministers who speak for the majority of the Reichstag and for an overwhelming majority of the German people; and having received also the explicit promise of the present German Government that the humane rules of civilized warfare will be observed both on land and sea by the German armed forces, the President of the United States feels that he cannot decline to take up with the governments with which the Government of the United States is associated the question of an armistice.

He deems it his duty to say again, however, that the only armistice he would feel justified in submitting for consideration would be one which should leave the United States and the powers associated with her in a

position to enforce any arrangements that may be entered into and to make a renewal of hostilities on the part of Germany impossible. The President has, therefore, transmitted his correspondence with the present German authorities to the governments with which the Government of the United States is associated as a belligerent, with the suggestion that, if those governments are disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the governments associated against Germany the necessary terms of such an armistice as will fully protect the interests of the peoples involved and insure to the associated governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government has agreed, provided they deem such an armistice possible from the military point of view. Should such terms of armistice be suggested, their acceptance by Germany will afford the best concrete evidence of her unequivocal acceptance of the terms and principles of peace from which the whole action proceeds.

The President would deem himself lacking in candor did he not point out in the frankest possible terms the reason why extraordinary safeguards must be demanded. Significant and important as the constitutional changes seem to be which are spoken of by the German Foreign Secretary in his note of the twentieth of October, it does not appear that the principle of a government responsible to the German people has yet been fully worked out or that any guarantees either exist or are in contemplation that the alterations of principle and of practice now partially agreed upon will be permanent. Moreover, it does not appear that the heart of the present difficulty has been reached. It may be that future wars have been brought under the control of the German people, but the present war has not been; and it is with the present war that we are dealing. It is evident that the German people have no means of commanding the acquiescence of the military authorities of the Empire in the popular will; that the power of the King of Prussia to control the policy of the Empire is unimpaired; that the determining initiative still remains with those who have hitherto been the masters of Germany. Feeling that the whole peace of the world depends now on plain speaking and straightforward action, the President deems it his duty to say, without any attempt to soften what may seem harsh words, that the nations of the world do not and cannot trust the word of those who have hitherto been the masters of German policy, and to point out once more that in concluding peace and attempting to undo the infinite injuries and injustices of this war the Government of the United States cannot deal with any but veritable representatives of the German people who have been assured of a genuine constitutional standing as the real rulers of Germany. If it must deal with the military masters and the monarchical autocrats of Germany now, or if it likely to have to deal with them later in regard to the international obligations of the German Empire, it must demand, not peace negotiations, but surrender. Nothing can be gained by leaving this essential thing unsaid.

Accept, Sir, the renewed assurances of my high consideration.

(Signed) *Robert Lansing.*

Mr. *Frederick Oederlin,*

Chargé d'Affaires of Switzerland ad interim,

in charge of German interests in the United States.

Nr. 2046. Vierte deutsche Note an Wilson, 27. Oktober 1918.

(**Vorg. W.** Nr. 85.)

Berlin, 27. Oktober 1918.

Die deutsche Regierung hat von der Antwort des Präsidenten der Vereinigten Staaten Kenntnis genommen. Der Präsident kennt die tiefgreifenden Wandlungen, die sich in dem deutschen Verfassungsleben vollzogen haben und vollziehen. Die Friedensverhandlungen werden von einer Volksregierung geführt, in deren Händen die entscheidenden Machtbefugnisse tatsächlich und verfassungsmäßig ruhen. Ihr sind auch die militärischen Gewalten unterstellt. Die deutsche Regierung sieht nunmehr den Vorschlägen für einen Waffenstillstand entgegen, der einen Frieden der Gerechtigkeit einleitet, wie ihn der Präsident in seinen Kundgebungen gekennzeichnet hat.

gez. *Solf*,
Staatssekretär des Auswärtigen Amtes.

Nr. 2047. Wilsons vierte Antwort an Deutschland. Lansing an den Geschäftsträger der Schweiz, 5. November 1918.

(**A. J. S.** 13, S. 95—96.)

Department of State, Washington, November 5, 1918.

Sir:

I have the honor to request you to transmit the following communication to the German Government:

In my note of October 23, 1918, I advised you that the President had transmitted his correspondence with the German authorities to the governments with which the Government of the United States is associated as a belligerent, with the suggestion that, if those governments were disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the governments associated against Germany the necessary terms of such an armistice as would fully protect the interests of the peoples involved and ensure to the associated governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government had agreed, provided they deemed such an armistice possible from the military point of view.

The President is now in receipt of a memorandum of observations by the Allied Governments on this correspondence, which is as follows:

„The Allied Governments have given careful consideration to the correspondence which has passed between the President of te United States and the German Government. Subject to the qualifications which follow they declare their willingness to make peace with the Government of Germany on the terms of peace laid down in the President's address to Congress of January, 1918, and the principles of settlement enunciated in his subsequent addresses. They must point out, however, that clause two relating to what is usually described as the freedom of the seas, is open to various interpretations, some of which they could not accept. They must, therefore, reserve to themselves complete freedom on this subject when they enter the peace conference.

Further, in the conditions of peace, laid down in his address to Congress of January 8, 1918, the President declared that invaded

territories must be restored as well as evacuated and freed. The Allied Governments feel that no doubt ought to be allowed to exist as to what this provision implies. By it they understand that compensation will be made by Germany for all damage done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea, and from the air."

I am instructed by the President to say that he is in agreement with the interpretation set forth in the last paragraph of the memorandum above quoted. I am further instructed by the President to request you to notify the German Government that Marshal *Foch* has been authorized by the Government of the United States and the Allied Governments to receive properly accredited representatives of the German Government, and to communicate to them terms of an armistice.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) *Robert Lansing.*

Mr. *Hans Sulzer,*
Minister of Switzerland,
in charge of German interests in the United States.

Registerteil.

A. Verzeichnis der Abkürzungen für die Quellenangaben.

A. A. D. S. = Auswärtiges Amt. Diplomatische Schriftstücke aus der Zeit vom 12. Dezember 1916 bis zum 19. März 1917. [Berlin, April 1917.] (Weißbuch.)

A. A. U. = Auswärtiges Amt. Schriftwechsel mit der Regierung der Vereinigten Staaten von Amerika, betreffend den Unterseehandelskrieg. [Berlin, Carl Heymann's Verlag, O. J.] (Weißbuch.)

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E. W. 2 = European War Nr. 2 (Printed and distributed October 21, 1915.) Department of State. Diplomatic correspondence with belligerent governments relating to neutral rigths and duties. Washington, Government Printing Office, 1915. (Weißbuch.)

E. W. 3 = European War Nr. 3. (Printed and distributed August 12, 1916.) Department of State. Diplomatic correspondence with belligerent governments relating to neutral rigths and duties. Washington, Government Printing Office, 1916. (Weißbuch.)

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L. G. = The London Gazette (London).

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B. Verzeichnis der in den Urkunden vorkommenden Staatsmänner.

(Vgl. Band III S. 761, IV S. 736, V S. 469 des Jahrbuchs des Völkerrechts.)

Adams, John, amerikanischer Gesandter in London, 1861.
Balfour, A. J., englischer Staatssekretär der auswärtigen Angelegenheiten.
v. Beneckendorff u. v. Hindenburg, Generalfeldmarschall.
v. Bernstorff, Graf Johann Heinrich, deutscher Botschafter in Washington.
v. Bethmann-Hollweg, Dr., Reichskanzler, Präsident des Staatsministeriums und Minister der auswärtigen Angelegenheiten.
v. Bismarck, Fürst Otto, deutscher Reichskanzler, 1871—1890.
Boy-Ed, Kapt. z. S., deutscher Marine-Attaché in Washington.
Bryan, William Jennings, Staatssekretär (Minister des Auswärtigen der Vereinigten Staaten von Amerika).
Bryce, J., englischer Botschafter in Washington, 1907—1912.
Burian v. Rajecz, Baron, österreichischer Minister des Aeußern.
Carranza, Präsident der Vereinigten Staaten von Mexiko.
Churchill, Winston L., Erster Lord der englischen Admiralität.
Crowe, Sir Eyre A., Hilfssekretär im englischen Auswärtigen Amt.
Czernin von und zu Chudenitz, Graf, österreichisch-ungarischer Ministerpräsident.
Dayton, amerikanischer Gesandter in Paris, 1863.
Dumba, Dr. Konstantin, österreichisch-ungarischer Botschafter in Washington.
Ekengren, W. A. D., schwedischer Gesandter in Washington.
Evans, Sir S., Präsident des englischen Prisengerichts.
Fitz Roy, Sir Almeric W., Clerk im Geheimen Rat des Königs von England.
Franklin, Benjamin, Gesandter der Vereinigten Staaten von Amerika in Paris, 1776—1785.
Gasparri, Kardinal, Staatssekretär Seiner Heiligkeit des Papstes.
Gerard, James W., Botschafter der Vereinigten Staaten von Amerika in Berlin.
Gorell of Brampton (Rt. Hon. Sir John *Gorell Barnes*), Präsident der Probate, Divorce, and Admiralty Division des High Court of Justice 1905—1908.
Grey, Sir Edward, englischer Minister der auswärtigen Angelegenheiten, 1905—1916 (jetzt Viscount *Grey of Fallodon*).
Grew, J. C., amerikanischer Botschaftsrat in Berlin.
v. Hertling, Graf, Reichskanzler, Präsident des Staatsministeriums und Minister der auswärtigen Angelegenheiten.
v. Jagow, deutscher Staatssekretär der auswärtigen Angelegenheiten.

Jackson, J. B., Marine-Attaché bei der amerikanischen Botschaft in Berlin.
Jefferson, Thomas, Präsident der Vereinigten Staaten von Amerika, 1801—1809.
Jellicoe, Sir J., Admiral, engl. Oberstkommandierender im Kriege 1914/16.
Johnstone, Alan, englischer Gesandter im Haag.
Jusserand, J. J., französischer Botschafter in Washington.
Lansing, Robert, Staatssekretär (Minister des Aeußern) der Vereinigten Staaten von Amerika.
Lincoln, Abraham, Präsident der Vereinigten Staaten von Amerika, 1860—1865.
Lloyd George, englischer Premierminister.
Lyons, Lord, englischer Botschafter in Washington, 1858—1865.
de Margerie, Jaquin, französischer Minister der auswärtigen Angelegenheiten.
Max, Prinz von Baden, Reichskanzler, Präsident des Staatsministeriums und Minister der auswärtigen Angelegenheiten.
Monroe, Präsident der Vereinigten Staaten von Amerika, 1817—1825.
Oederlin, Fr., Handelsattaché bei der schweizerischen Gesandtschaft in Washington.
Page, Walter, Botschafter der Vereinigten Staaten von Amerika in London.
v. Papen, Hauptmann, deutscher Militär-Attaché in Washington.
Penfield, Frederic Bourtland, Botschafter der Vereinigten Staaten von Amerika in Wien.
v. Pohl, Chef des deutschen Admiralstabes der Marine.
Russell, Earl, englischer Minister des Aeußern, 1859—1865.
Salisbury, Lord, englischer Minister der auswärtigen Angelegenheiten, 1878—1902.
Seward, W. H.. Minister des Auswärtigen der Vereinigten Staaten von Amerika, 1861—1869.
Sharp, W. Graves, Botschafter der Vereinigten Staaten von Amerika in Paris.
Solf, Dr., Staatssekretär des Auswärtigen Amtes.
Spring Rice, Sir Cecil A., englischer Botschafter in Washington.
Stone, Senator William J., Chairman of the Senate Committee on Foreign relations.
Stowell, Lord, (früher Sir Walter *Scott*), berühmter englischer Prisenrichter zur Zeit der napoleonischen Kriege.
Sulzer, Dr., schweizerischer Gesandter in Washington.
v. Tarnow-Tarnowski, Graf, österreichisch-ungarischer Gesandter in Sofia.
Wallenberg, K. A., schwedischer Minister des Aeußern.
Washington, George, Präsident der Vereinigten Staaten von Amerika, 1789—1797.
Wilson, Woodrow, Präsident der Vereinigten Staaten von Amerika.
Zimmermann, Unterstaatssekretär im deutschen Auswärtigen Amte.

C. Inhaltsverzeichnis nach der Zeitfolge der Geschehnisse des Weltkrieges.

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8. I.	*Wilsons* Botschaft an den Kongreß (Vierzehn Punkte)	280-284	**T.** 9. I. 18 Nr. 41682
11. II.	*Wilsons* Botschaft an den Kongreß (vier Punkte; Antwort auf die Reden des deutschen Reichskanzlers und des Grafen *Czernin*) .	285-288	**T.** 12. II. 18 Nr. 41682
11. V.	Das Völkerbundsprogramm des Viscount *Grey of Fallodon,* K. G.	289-293	*S. Jb. VI S 289 An.*
4. VII.	Rede *Wilsons* am Grabe *Washingtons* . .	293-295	**T.** 5. VII. 18 Nr. 41834
14. IX.	Sonderfriedensnote Oesterreich-Ungarns an die Regierungen aller kriegführenden Staaten	300-302	**N. F. P.** 15. IX. 18
17. IX.	Antwort der Vereinigten Staaten auf die Friedensnote Oesterreich-Ungarns	302-303	**A.J.S.** 13 S. 76
27. IX.	Rede *Wilsons* an seine Mitbürger in New York (fünf Punkte)	296-300	**T.** 28. IX. 18 Nr. 41907
3. X.	Erste deutsche Note an *Wilson* mit Friedensangebot	303	**Vorg.W.** Nr. 34
8. X.	*Wilsons* erste Antwort an Deutschland . .	303-304	**A.J.S.** 13 S. 86, 87
12. X.	Zweite deutsche Note an *Wilson*	304	**Vorg.W.** Nr. 47
14. X.	*Wilsons* zweite Antwort an Deutschland .	305-306	**A.J.S.** 13 S. 88, 89
20. X.	Dritte deutsche Note an *Wilson*	306-307	**Vorg.W.** Nr. 64
23. X.	*Wilsons* dritte Antwort an Deutschland .	307-308	**A.J.S.** 13 S. 92, 93
27. X.	Vierte deutsche Note an *Wilson*	309	**Vorg.W.** Nr. 85
5. XI.	*Wilsons* vierte Antwort an Deutschland .	309-310	**A.J.S.** 13 S. 95, 96

